Update
Working Together for Families and Children

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CFCC Holds "Unified Courts for Families" Symposium in September

Rowena Rogelio, CFCC Staff

Earlier this year, the Center for Families, Children & the Courts (CFCC) established the Unified Courts for Families program. The goal of the program is to assist California courts in improving court procedures and outcomes for families and children by encouraging unification or coordination of juvenile, family, and other proceedings involving families and children. During the planning phase of the program, courts in 31 of California's counties have applied for and received grants to create plans to unify or coordinate their family and juvenile proceedings.

The two-day Unified Courts for Families Symposium—a key element of the planning process—was held at the Fairmont Hotel in San Jose on September 23–25, 2002. Each of the 31 counties participating in the planning phase sent a team of judges, administrators, service providers, and other representatives to the symposium, where the agenda included plenary and workshop sessions, county team meetings, and opportunities for information sharing and discussion among courts. Workshops addressed a variety of topics central to unification and coordination of family and juvenile pro-

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The Harriett Buhai Center For Family Law: An Innovative Approach to Pro Per Assistance

Ingrid V. Eagly, Associate, Arnold & Porter

The Harriett Buhai Center for Family Law (HBCFL) in Los Angeles assists low-income clients with family law and domestic violence matters. Over the past 19 years, HBCFL has developed a path-breaking pro per model for providing desperately needed legal services. Co-sponsored by the Los Angeles County Bar Association, Black Women Lawyers, and Women Lawyers Association of Los Angeles, the center relies heavily on the assistance of trained volunteer attorneys, paralegals, and law students in providing its services. The primary areas of assistance include custody, visitation, child support, spousal support, child kidnapping, paternity establishment, dissolution of marriage, visitation, custody, and domestic violence. Through the use of this innovative model, HBCFL is able to give high-quality assistance to more than 1,500 clients each year, over three-fourths of whom are women and nearly half of whom report some history of domestic violence.

Pro Per Program

HBCFL's Pro Per Program—one of the first of its kind in the country—is an innovative approach to meeting the growing need for access to the family

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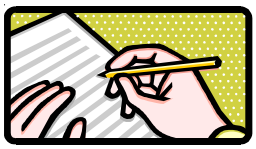
In This Issue

Editor's Note

Welcome to the December 2002 issue of

Update, the Center for Families, Children & the Courts (CFCC) newsletter. The newsletter focuses on court and Court-related issues involving children, youth, and families. We hope you find this issue informative and stimulating. As always, we wish to hear from you. Please feel free to contact CFCC about the events and issues that interest you.



We invite your queries, comments, articles, and news.

Direct correspondence to Beth Kassiola, Editor, at the e-mail address below.

Center for Families, Children & the Courts

Update

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Unified Courts for Families Symposium
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ceedings. They included "Approaches and Components of Unification and Coordination," "Overcoming Obstacles and Barriers to Unification," "Problem Solving on Different Types of Cases and Avoiding Conflicting Orders," "Delivering Improved Services Through Court Coordination and Unification," and "Ethical Issues for Judges and Attorneys for Children Working in a Unified or Coordinated Family and Juvenile Court."

An estimated 400 participants attended the symposium. Presenters from California and from around the country shared their expertise. Symposium participants learned from representatives of unified family courts and other organizations in California, Indiana, Oregon, Kentucky, New Jersey, Hawaii, Arizona, and Maryland. Materials distributed during the conference provided helpful information on issues such as technology, case management, funding, confidentiality, team building, and information sharing between departments and agencies.

During the lunchtime plenary session on the final day, the American Institutes for Research (AIR) presented the results of part I of a needs assessment that the planning grant courts had completed earlier that month. AIR has been working with CFCC staff on developing both the needs assessment and the evaluation plan for this project. Part I of the needs assessment was a survey designed by the Administrative Office of the Courts to help assess each court's needs for unification and coordination. It required each court to identify and prioritize the desired outcomes of its unification or coordination plan. More than 75 percent of the courts reported that their highest priorities for this project were identifying families who have cases in more than one courtroom, informing judicial officers about existing orders, addressing the safety of victims of domestic violence and/or their children, and establishing computerized case management systems.

The symposium served as an excellent opportunity for individuals participating in the planning phase of the project to learn about unification issues, exchange information and ideas about overcoming obstacles, learn from national experts, and generate enthusiasm for their planning efforts.

The final steps in the planning phase of the project include each participating court's consideration of the questions for discussion and related optional exercises in part II of the needs assessment, finalizing unification or coordination plans, and creating action plans. The planning phase will conclude on December 13, 2002.

The next phase of the program, the mentor courts phase, begins with the release of a request for proposals (RFP) in early November. During that phase, interested courts will apply for one of 6 to 12 mentor court grants to implement family and juvenile unification or coordination efforts. It is anticipated that the grant period will be three years. Each of the 58 California courts is invited to submit a proposal to become a mentor court, and proposals will be due on or about December 13, 2002.

To receive a copy of the data presented for part I of the needs assessment, a copy of the symposium binder, or any other information about the project, please contact Rowena Rogelio at 415-865-7730; e-mail: rowena.rogelio@jud.ca.gov.

Kids' Turn
A Unique Program for Families in Transition

Claire N. Barnes, M.A., Executive Director, Kids' Turn San Francisco

Kids' Turn is a nonprofit organization started in 1988 by a group of family law professionals in the San Francisco Bay Area. Retired Judge Ina Levin Gyemant, mediator Jeanne Ames, psychiatrist John Sikorski, M.D., and attorneys Ann Van Balen and Jennifer Jackson knew what research has since proved—that parents who participate in parent education during divorce or separation have a better chance of reducing the family conflict associated with the divorce or separation.

Children whose parents are divorcing or separating and who are exposed to extended, intense conflict during times of family reorganization:

- Tend to have poorer emotional adjustment;
- Show an increased risk of accidents, injuries, and poisonings;
- Exhibit signs of early disengagement from school;
- Exhibit a disproportionately high range of negative behavioral problems;
- May be affected directly by the losses and economic hardships created by lower income and assets; and
- Demonstrate a lower sense of self-esteem (boys) or exhibit over-controlled "good" behavior (girls).

Kids' Turn filled a significant community service gap by offering a program to reduce the chances that children would be victimized by parental conflict. Kids' Turn also gives children a safe place to discuss how the separation or divorce affects them.

Since 1988 Kids' Turn has provided educational workshops (not therapy) to help ensure that children of divorce are not overlooked by their parents. Parents and children attend simultaneous but separate, noninteractive instruction that refocuses parents on their children and teaches children to understand their family situations. By doing so, Kids' Turn contributes to an improved home environment in which children can thrive and grow up healthier and safer, feeling more loved. The capacity exists to deliver the program in English and in Spanish. Current programmatic offerings include the Kids' Turn core curriculum (for children ages 4–17 and their parents); the Early Years Program (Dorothy S. Huntington, Ph.D. Memorial Curriculum) for parents of children ages 0–3; a Step Family Program for families reorganizing into a stepfamily configuration; and the newest program, the Kids' Turn Nonviolent Family Skills Program. The latter program was developed at the request of San Francisco's Unified Family Court to help parents of very young children in families touched by violence learn to parent and manage their lives violence-free.

During 2002–2003 Kids' Turn San Francisco will present 25 workshops targeting five Bay Area counties, with an average of 20 to 25 parents and 20 to 25 children participating in each. The Contra Costa County and San Francisco workshops have ongoing waiting lists for participation. Most recently, Kids' Turn San Francisco has been focusing on developing community partnerships to make the services available to families marginalized by language, economics, or ethnicity.

In the early 1990s, the board of Kids' Turn San Francisco developed a framework for selling the curriculum and for licensing affiliates. Presently, seven organizations hold affiliate status; they are located in California (Sonoma, Napa, Fresno, San Diego, Shasta, and Yolo Counties)—Dayton, Ohio; and Hillsboro, Oregon. At an annual meeting of affiliates Kids' Turn professionals can discuss and share curriculum changes and common program delivery issues. Notably, during 2001 all of the Kids' Turn programs combined served 5,000 participants.

Representative affiliate activities include the following.

San Diego. Kids' Turn San Diego has spearheaded the effort to pass legislation to fund a research study that will monitor the efficacy of Kids' Turn–like programs in the state. The legislation has gone to the desk of the Governor for his signature. Because San Diego has the second highest number of family court filings and dispositions in the state, Kids' Turn San Diego is working to address the critical needs of families in that community.

Napa County. In Napa County, Kids' Turn workshops are offered three times per year (fall, winter, and spring). Recently the number of fathers participating in the program has increased, and Napa County offered its first Early Years workshop this past year.

Shasta/Cascade. Kids' Turn Shasta/Cascade conducts four workshops annually and two stepparenting (blended family) sessions. Focused outreach is being conducted in the town of Weaverville in Trinity County, and the organization hopes to travel to that mountain town at least biannually.

In its 14-year history, Kids' Turn has developed and refined curricula for specific age groups, produced extensive educational materials for distribution to workshop participants, trained mental health professionals and certified school teachers as workshop leaders, established systematic methods of outreach and education for local and statewide professional groups, and licensed eight affiliates.

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HBCFL Pro Per Assistance
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court system while empowering and educating clients. Through the Pro Per Program, clients meet with HBCFL volunteers in small group settings known as clinics. During the clinics, which generally last five to six hours, clients learn how to prepare their own legal documents and file appropriate legal paperwork, and they learn what to expect in court.

Clients are selected for participation in the Pro Per Program through a detailed screening designed to assess their legal needs. The first step in this process is a telephone screening in which the client's income eligibility and type of legal problem are determined. Next, prospective clients are invited to participate in HBCFL's Client Orientation Assessment System (COAS). The goal of COAS is to provide potential clients with educational information concerning family law so that they can make informed choices about whether legal action is something they want to pursue. The COAS session also increases the efficiency and quality of the pro per model, since it allows for individualized assessment of the client's legal needs and provides the client with information on what is involved in participation in HBCFL's Pro Per Program.

If the client's legal problem is determined to be appropriate for pro per assistance, the client is given the opportunity to participate in one of HBCFL's clinics. In both dissolution and paternity cases, clients participate in day-long intensive clinics at three different stages of their cases. For example, in the first dissolution clinic, clients complete the petition to initiate their family law cases and are given instructions on filing and service. During the second dissolution clinic, clients prepare required financial disclosures and property declarations and, in the case of uncontested divorces, prepare requests for default. In the third clinic, clients with uncontested cases prepare proposed judgments, which include custody and visitation orders. In contested cases, clients use the third clinic to prepare their requests for a trial date and trial briefs and are trained by HBCFL volunteers in presenting their cases to the judge.

Clients participating in the clinics who need additional assistance may speak with HBCFL's attorneys and volunteers either by calling during HBCFL's telephone hours or by scheduling an individual appointment with an HBCFL volunteer. For example, clients often require more individualized attention to respond to or bring motions, obtain temporary orders (e.g., child support or domestic violence), and prepare for trial. In order to further expand the accessibility of HBCFL's services, the clinics are available in Spanish (the HBCFL staff is fully bilingual in English and Spanish) and are offered on Saturdays.

Additional Services

Through the use of HBCFL volunteers and staff attorneys, clients participating in the Pro Per Program can access additional legal services that meet the needs of their particular cases. HBCFL has learned over the years that not all clients or cases fit neatly into the basic pro per model. In particular, pro per clients may benefit from representation at single court appearances if the opposing party is represented by counsel; if there is a significant history of domestic abuse; or if there are complicated property, custody, or visitation issues. Finally, for cases that are so complex that they are not suited for participation in the Pro Per Program, HBCFL refers clients to a pro bono panel for full-scale legal representation by a volunteer attorney.

Empowerment

Clients of HBCFL consistently give positive reviews of their experience with self-representation. Through the center's pro per clinics, clients learn about their rights in the family law context, such as the right to say no to domestic abuse and the right to receive economic support from a noncustodial parent. Clients often report not only that the process enabled them to achieve the result they desired but that they felt empowered by the process. For example, one recent client wrote in her review that the process of representing herself helped her to build self-esteem and allowed her to make a positive contribution to her own future. Another HBCFL client explained that HBCFL "created a sense of confidence and support in my decision about divorce." A client who had just obtained her divorce through HBCFL reported: "Your HBCFL was very informative and thorough in informing me as to what to expect in court, my rights, opponents' rights, and some insights on how things really work in court. I feel more involved and knowledgeable, instead of feeling like I'm kept in the dark from very important decisions."

To learn more about the programs offered by the Harriett Buhai Center for Family Law, attend one of HBCFL's upcoming family law trainings, or become a volunteer, contact staff attorney Rachel Kronick Rothbart at 213-388-7505, extension 312; e-mail: rkr@hbcfl.org. For more information about the Harriet Buhai Center, please visit the Web at *http://www.hbcfl.org/index.html*.

Ingrid Eagly is a member of Arnold and Porter's litigation practice group. A 1995 cum laude graduate of Harvard Law School, Ms. Eagly served as a law clerk to the Honorable David H. Coar of the U.S. District Court in the Northern District of Illinois. She has volunteered with the Harriet Buhai Center since 1999.

California Courts Declare November Adoption and Permanency Month

The Judicial Council of California once again declared November to be Court Adoption and Permanency Month to focus attention on California's adoption system. The action was taken at a public meeting, in conjunction with similar actions by the Governor's Office and the Legislature. November is National Adoption Month.

Since 1999 the judicial branch has urged courts and communities to make special efforts during the month of November to address the importance of

adoptions in their counties. With more than 100,000 children in California living apart from their families, and with 24 percent of the children who enter non-kin foster care still in the foster care system three years later, counties are using Court Adoption and Permanency Month to find children permanent homes.

"Court Adoption and Permanency Month provides courts with the perfect opportunity to focus attention on the adoption system in order to recruit more potential adoptive parents and to help children find safe and permanent homes," said Judge Michael Nash, who presides over the Juvenile Court, Superior Court of Los Angeles County. "Especially for those courts with a backlog of adoption cases, Adoption Saturdays and other similar programs have proven to be an effective tool for lightening the juvenile court's heavy caseload. We hope that courts will continue these important efforts year round."

Activities scheduled for November included:

- The Superior Court of Los Angeles County joined courts in New York, Chicago, Washington, D.C., Dallas, and Atlanta in holding Adoption Saturday on November 23. To date, more than 5,244 adoptions have been finalized in Los Angeles on Adoption Saturdays through the volunteer work of judges, attorneys, bailiffs, law students, and community volunteers.
- The Superior Court of Ventura County held an Adoption and Permanency Information Fair during November. Local nonprofit agencies that work with and provide services to foster, kinship, and adoptive parents set up information tables and answered questions about the process. The court issued Spanish- and English-language public service announcements about the need for more adoptive families.
- Alameda, Fresno, and several other counties held Adoption Saturdays.
- On the last Friday of the month, the Superior Court of El Dorado County dedicated the entire day to adoptions.

"It is critical that courts continue to expedite the adoption and permanency process," said Judge Brenda Fay Harbin-Forte, who presides over the Juvenile Court, Superior Court of Alameda County. "Too many of California's children are still living outside the home. Through the courts' special efforts in November and continuing efforts throughout the year, we will be even closer to our goal of ensuring that all of our children have families who love and care for them."

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Victim Offender Restitution Services For Youthful Offenders

Steve Goldsmith, Director, Centinela Valley Juvenile Diversion Project

Each year in Los Angeles County, 45,000 young people are arrested, 21,405 are placed in Juvenile Hall, and 16,292 are placed on probation. Many of these young people remain in the juvenile justice system, commit further crimes, and ultimately are incarcerated for long sentences. The best time to intervene in such cases is before the first arrest. Since that is sometimes impossible, the next best time is when the youth has committed only one or two minor offenses. The juvenile justice system has few programs to help youthful offenders dispel the notion that it is okay to commit a crime, and even fewer that help the victims of juvenile crimes.

In the 1960s the restitution movement, also referred to as restorative justice, grew out of the rediscovery that paying back the victim had numerous benefits. The movement gained popularity because: the victim, rather than the state, is often the party harmed; alternatives to imprisonment are needed; there is rehabilitative value in restitution; and it was thought that restorative justice might lead to a reduction in revenge from victims. Studies in the 1970s and 1980s showed mixed results with regard to all restorative programs. Even so, restitution programs have gained popularity and proliferated. Additionally, the victims' movement brought with it reforms in the justice system in the 1970s.

In *Restoring Justice*, Second Edition Anderson Publishing Co., (Cincinnati: 2002), Daniel W. Van Ness and Karen Heetderks Strong address the needs that crime victims confront after the crime occurs. The restorative movement focuses on three areas: increasing services to victims, increasing financial reimbursement, and increasing victims' involvement in the justice system. In the 1970s Mark Umbriet, Howard Zehr, and Ron Classen began writing about mediation as a way to bring together victim and offender to discuss the crime and the harm that resulted. Zehr and Classen use a faith-based model and feel that such programs offer genuine healing for both the victim and the offender.

Ten years ago, Centinela Valley Juvenile Diversion Project (CVJDP), a small nonprofit agency in Hawthorne, California, began to build a restorative model for youthful offenders by secularizing the church-based model and adapting it to inner-city youth. One of the programs offered by CVJDP is the Victim

Offender Restitution Services (VORS) program. With a six-member staff that serves 750 clients per year, it is now one of the largest urban victim offender programs in the country. CVJDP is administered by the City of Hawthorne but serves youthful offenders throughout Los Angeles County, from Palmdale to Long Beach. CVJDP has 20 full-time staff members including a director, coordinators, case managers, outreach workers, and administrative staff. In addition to the VORS program, CVJDP offers a family mediation program; individual, family, and group counseling; tutoring; training in parenting; peer mediation programs at 25 schools; anger management classes; and referrals to other agencies for link services.

The VORS program receives referrals from the Probation Department, District Attorney's Office, law enforcement agencies, and school districts. A case manager contacts the victim and the offender, and if they consent, the case manager sets up a mediation. Mediations are conducted by two trained volunteer mediators from the community, at locations in the community. The mediators assist the injured party and juvenile offender in discussing the crime. Usually the youth begins to have empathy for the victim, and a written agreement on restitution is drawn up.

The traditional view of justice is that the offender has committed an offense against the state. Howard Zehr is considered the "grandfather" of the restorative justice model, in which the offense is viewed as being primarily against the victim and the community. Hence, the three elements of the restorative model are the victim, the offender, and the community.

After a crime or offense has occurred:

- The *victim*, in order to be restored, must be repaid for the loss, and his or her sense of security must be rebuilt.
- The *offender*, in order to be restored, must understand that what he or she did was wrong and must regain self-esteem. This occurs when the offender repays the victim, feels empathy for the victim, and "makes things right."
- In order for the *community* to be restored or made whole again, not only does public safety need to be restored, but both the victim and the offender need to be reintegrated into the community.

CVJDP uses mediation as the vehicle for all these events. The mediation gives the offender an opportunity to come face to face with his or her victim and hear how the crime affected the victim. Instead of viewing the youth as a criminal, the restorative model views the youth as a young person who has committed an

offense. It views the victim as a person against whom an offense has been committed. This paradigm helps keep both parties from being labeled and allows them to move forward once restitution is completed. The mediation process does not diminish the seriousness of the crime or reduce the accountability of the youth; rather, it brings them to the foreground.

During the mediation process, everything possible is done to prevent the victim from becoming revictimized. For example:

- The victim is contacted first; if he or she does not want to participate in mediation, the case is sent back to the referring party. (Offenders rarely refuse the mediation.)
- Mediation sessions take place in locations near the victim's home or business so as not to further inconvenience him or her. Currently, CVJDP has 200 sites in Los Angeles County where mediations can take place and over 100 volunteer mediators. By providing mediation sites and volunteers, the community becomes involved in the mediation process.

At the mediation, the first step is for the parties to sign a document of confidentiality and establish ground rules for the mediation. The youth is given a chance to tell his or her side of the story and explain what occurred. Then the victim tells his or her side of the story and explains the effect of the crime. The parents of the offender are present but generally are not allowed to participate in the retelling, so the youth is held accountable for his or her actions. Finally, the mediator helps the parties come to a written agreement for restitution. This agreement may include an apology, monetary payment, and/or community service. The case manager then helps the youth fulfill the restitution agreement and contacts the referring parties when the agreement is complete.

In May 2000, the Center for Families, Children & the Courts conducted an extensive study of six victim offender reconciliation programs in California. An outside professional evaluator examined CVJDP's VORS program. A random sample of those who reached mediation was compared to a control group of those whose victims chose not to participate. The recidivism of the VORS group one year after the mediations was 51 percent lower than that of the comparison group. A survey conducted immediately post-mediation revealed that 97 to 99 percent of clients were satisfied with the mediation results and were glad they had participated. The proportion of agreed-upon restitutions actually paid by the VORS group was more than 10 times greater than the corresponding proportion for the comparison group. A copy of the study can be viewed and downloaded at *www.courtinfo.ca.gov/programs/cfcc/programs/description/delproj.htm.*

The VORS program faces several challenges to its ability to continue serving the public in the future. It needs continued support from law enforcement agencies, a steady stream of referrals, and stable funding sources. It is vital that the probation department inform victims and offenders that this program is available to them. We hope that when law enforcement officers, district attorneys, judges, and probation officers encounter a youth offender, they ask themselves, "Would this youth benefit from meeting with the victim?" or "Would the victim benefit from meeting with this offender?"

Why does the program work? After years of experience, the staff believes that the program works because youths meet with their victims and experience empathy toward them. When confronted with the temptation to commit a similar crime in the future, such a youth will not be as likely to reoffend. The staff also believes that a youth who has gone through the mediation and restitution process with the help of his or her parents has built a better relationship with them and would not want to disappoint them again.

Steve Goldsmith has been the director of the Centinela Valley Juvenile Diversion Project since 1992. He has received many awards and honors for his work in juvenile justice.

Educational Training Institutes

Sponsored by the AOC's Center for Families, Children & the Courts

2002 Family Court Services Bay Area Regional Training Institute
October 17–18, 2002
Monterey

Family Court Services Far Northern Regional Institute
November 14–15, 2002
Mount Shasta

Beyond the Bench XIV
December 4–6, 2002
Pasadena

Family Court Services Statewide Education Institute
March 20–22, 2003
Los Angeles

For additonal information on dates and locations, please call 415-865-7739

Donald Saposnek Receives Distinguished Mediator Award

Donald T. Saposnek, Ph.D., a clinical child psychologist, child custody mediator, and long-time faculty trainer for Center for Families, Children & the Courts (CFCC) workshops, was recently honored with the International Association for Conflict Resolution's prestigious John M. Haynes Distinguished Mediator Award for 2002. This award is presented yearly to a mediator for outstanding contri-butions to the field of mediation. The honoree is selected from among over 7,000 members of the association, representing 47 countries and 18 areas of mediation practice.

Dr. Saposnek is on the psychology faculty of the University of California at Santa Cruz, is a national and international trainer in family mediation and child development, has published extensively in the professional literature, and is on the editorial boards of several international mediation journals. He edits both the Association for Conflict Resolution's *Family Mediation News* and the family section of *Mediate.com*, and is the author of the book *Mediating Child Custody Disputes*, which is considered by family mediators to be a classic text in the field.

From 1981 until 1998, Dr. Saposnek was director of family mediation services for the Santa Cruz County Family Court. In 1991 he developed Santa Cruz County's Divorce Education Workshop—which was mandated for all divorcing parents—and directed the workshop until 1999.

The award was presented in August 2002 at the annual convention of the International Association for Conflict Resolution in San Diego.

For further information, contact Dr. Saposnek at 831-476-9225; e-mail: dsaposnek@mediate.com; Web site: *www.mediate.com/dsaposnek.*

Kids' Turn
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As more communities acknowledge the value of educational programs for divorcing families, Kids' Turn is ready to stay ahead of the challenge by enhancing its responsiveness to the communities where it conducts its programs. Addressing the psychosocial dynamics presented by high levels of conflict, stay-away orders, incarcerated parents, economic downturns, and other critical human circumstances, Kids' Turn remains committed to helping children through challenging times.

Claire Barnes is beginning her third year as executive director of Kids' Turn, to which she brings extensive professional experience in education and social work. Her service to the San Francisco community includes membership on the Parent Education Committee of the Unified Family Court, the Mentor Court Unification Planning Team, the Rally Program's Advisory Committee, and the Safe Start Advisory Committee.

HOT OFF THE PRESS! Latest Research Updates Now Available

The Center for Families, Children & the Courts recently released three "research updates" related to mediation. The updates are reports aimed at court personnel and others involved in the courts.

- **"Domestic Violence in Court-Based Child Custody Mediation Cases in California"** analyzes the prevalence of interpersonal violence among parents involved in child custody mediation, using data from the Statewide Uniform Statistical Reporting System (SUSRS). The report discusses the implications of these findings for the implementation of rule 1257.2 of the California Rules of Court, which guides court staffs in their work with families that have histories of domestic violence.
- **"Difficult Cases in Court-Based Child Custody Mediation in California,"** using data from the SUSRS, focuses on the characteristics of child custody mediation cases that do not reach agreement and that mediators rate as "difficult cases." The roles played by domestic violence, substance abuse, co-parenting problems, and allegations and counterallegations in these cases are analyzed.
- **"Court-Based Juvenile Dependency Mediation in California"** provides an up-to-date description of the juvenile dependency mediation programs in California. Using results from a recent survey, this report focuses on organizational and service models and discusses the similarities and differences among programs around the state.

For a copy of any of these updates, please visit the publications section of our Web site at *www.courtinfo.ca.gov/programs/cfcc/resources/publications/articles.htm.* You may also contact Anna Philips at 415-865-7567 or via e-mail at anna.philips@jud.ca.gov to obtain a copy.

KLEAR Program Addresses Hate-Motivated Behavior in San Mateo County

Jill Selvaggio, Project Manager and Community Outreach Coordinator, Superior Court of California, County of San Mateo
Bill Lowell, Deputy Court Executive Officer, Superior Court of California, County of San Mateo

In the south end of San Mateo County, a young student who had been harassed planned to kill a fellow student and then commit suicide; in the north end of the county, students turned to the court to get restraining orders against their fellow students when differences became conflicts.

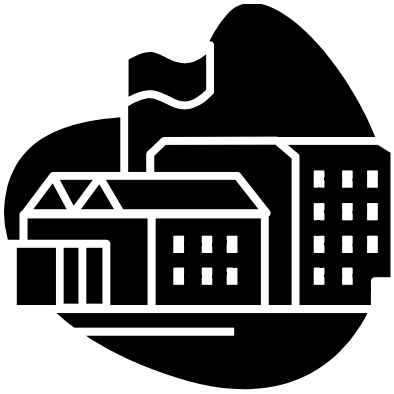
Concerned about youngsters whose involvement in the criminal justice system had been preceded by numerous other hateful incidents, Superior Court Judges Marta Diaz and Margaret Kemp convened a committee to create a program that would address the issues behind hate speech and hate incidents. The first committee meeting was attended by two dozen community leaders, including representatives of schools, police departments, and probation and community service agencies. At that meeting the KLEAR (Kids Learning Empathy and Respect) program was born.

The KLEAR program takes a three-pronged approach to addressing hate-motivated behavior. First, KLEAR is an alternative to suspension for those who have participated in hateful behavior. Second, the program focuses on prevention of future hateful acts by addressing the beliefs behind the behavior. Third, the program utilizes a restorative justice approach; that is, the offender works to mitigate the damage caused to the victim and the community. KLEAR, however, is not a diversion program; acts rising to the level of a criminal offense continue to be addressed through the criminal justice system.

The program was launched in October 2001. To date, 30 students and at least one accompanying adult have completed the program. KLEAR recently conducted a summer program at the county's two schools for incarcerated youth. In the coming months, KLEAR will be expanded to a YMCA-based program for kids on probation.

A True Collaborative

The overall support of this program by all branches of the criminal justice system, schools, and community service agencies has been tremendous. The court provides support as the program searches for innovative ways to tackle the problem of hate-motivated behavior and, more fundamentally, changing school cultures toward respect for all. The pilot schools, from San Mateo Union High School District, have implemented a new Code of Conduct, which outlines acceptable behavior and encourages empathy and respect for all students. The Probation Department coordinates recognition of potential participants with the help of juvenile police officers and on-campus probation officers at participating schools. The San Mateo County Board of Supervisors issued a proclamation in support of the program.



Many social service agencies have pledged their support. Peninsula Conflict Resolution Center, a nonprofit mediation agency, is the program's host agency and has two part-time staff members dedicated to the program. Community service agencies share information about different cultures and lifestyles. Many religious organizations have volunteered to educate KLEAR participants about religious differences.

Program Details

Students are referred to the program by their schools. The program consists of three highly interactive sessions, which include individual and group exercises, presentations, and opportunities for skill development. Parent participation is a key element, and at least one parent or primary caregiver is required to attend with the student. Through presentations from persons who have been victims, role playing, and other forms of instruction, participants learn about the harmful impacts of their behavior and how to develop empathy and respect for others.

This methodology is effective at reducing repeat behavior. A victim awareness education program in Washington state found a reduction in recidivism in those who participated in learning about the victims, relative to those who did not.

The curriculum for KLEAR is based on successful models currently in use, including one developed by the Education Development Center, Inc., on behalf of the federal Office of Juvenile Justice and Delinquency Prevention. The educational component attacks the ignorance behind the participants' belief systems. The main goal is to instill understanding for victims of discrimination and violence. Role playing is used to put participants in the role of the victim. Role playing is also used to teach skills for responding to peer pressure. Instruction in ethics and values makes the participants aware of the ramifications of their belief systems. One goal of the instruction is for the juveniles to learn that the differences between people are not as significant as they may have imagined.

Impact of the Program

A survey of the 30 students and parents who completed all three sessions found that the program had positive impacts on

Continued on page 10

KLEAR Program
Continued from page 9

behavior, empathy, and acceptance and respect for differences. When asked, 88 percent of respondents indicated that they had gained empathy for victims of hurtful behavior. Ninety-five percent of respondents indicated that they had a greater acceptance and respect for differences after completing KLEAR. Similarly, 95 percent of respondents indicated that they had developed skills and tools for effective, positive communication and conflict management. A review of school administration files (conducted with parents' permission) found that 77 percent of respondents were able to avoid repeat offenses of hurtful behavior.

The KLEAR program is one of the few prevention-oriented and educationally based school safety programs. Its early successes and its expansion into other arenas have shown that KLEAR is effective at ensuring that schools are safe, nurturing environments for students.

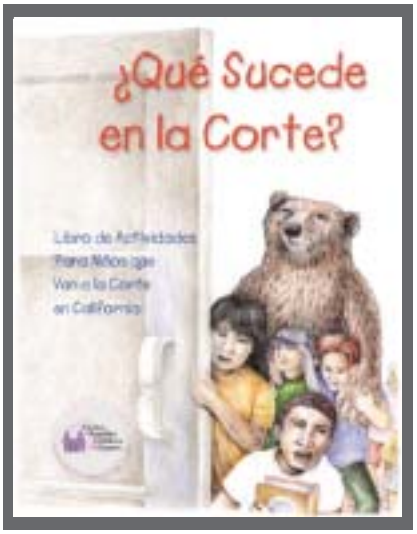
Jill Selvaggio is a project manager and community outreach coordinator for the Superior Court of San Mateo County. She has worked for the court for three years and was named chair of the San Mateo County Self-Represented Litigants Collaborative's subcommittee on using technology to assist self-represented litigants. Ms. Selvaggio earned a master's degree in criminal justice with an emphasis in policy analysis and pro-gram evaluation from Loyola University, Chicago.

Bill Lowell has been a deputy executive officer in the Superior Court of San Mateo County for three years. He is responsible for planning and development, including community outreach and certain operational areas such as the courtroom clerks and records units. Mr. Lowell has a B.A. in Asian studies from Hofstra University and an M.B.A. in finance from New York University.

CFCC Publishes Children's Activity Book in Spanish

The Administrative Office of the Courts' Center for Families, Children & the Courts (CFCC) has published a Spanish version of the highly successful *What's Happening in Court? An Activity Book for Children Who Are Going to Court in California. ¿Qué Sucede en la Corte? Libro de Actividades Para Niños que Van a la Corte en California* is intended to provide children and families in the California court system who are not proficient in English with information on the court system and on court proceedings that children may encounter.

CFCC is grateful to the U.S. Department of Health and Human Services for its generous funding, which enables the distribution of this book at no charge. Both the Spanish and English versions may be downloaded at *www.courtinfo.ca.gov/programs/children.htm.* If you are interested in receiving copies of the book to distribute, please contact CFCC by e-mail at cfcc@jud.ca.gov or by phone at 415-865-7739.



News from the AOC

The Administrative Office of the Courts publishes several newsletters reporting on various aspects of court business. Visit these other publications online on the California Courts Web site at *www.courtinfo.ca.gov*. To subscribe, contact pubinfo@jud.ca.gov.

Capitol Connection
Single-source update on legislative issues affecting the judicial branch and information regarding the legislative process. Distributed monthly via e-mail. See *www.courtinfo.ca.gov/courtadmin/aoc/documents/capcon1002.pdf*.

Court News
Award-winning bimonthly newsmagazine for court leaders reporting on developments in court administration statewide. Indexed from 2000 at *www.courtinfo.ca.gov/courtnews*.

2002 Family, Domestic Violence, and Juvenile Law Legislation Summary

During the first year of the 2002–2003 Legislative Session, the Legislature and Governor enacted over 100 bills that affect the courts or are of general interest to the legal community. Many of these bills relate directly to issues involving children and families. A selection of pertinent bills follows. The effective date of legislation is January 1, 2003, unless otherwise noted.

The bill descriptions are intended to serve only as a guide to identifying bills of interest; they are not a complete statement of statutory changes. Code section references are to the sections most directly affected by the bill; not all sections are cited.

Until the annual pocket parts are issued, bill texts can be examined in their chaptered form in *West's California Legislative Service* or *Deering's Legislative Service*, where they are published by chapter number.

In addition, chaptered bills and legislative committee analyses can be accessed at *www.leginfo.ca.gov/bilinfo.html* on the Internet. Individual chapters may be ordered directly from the Legislative Bill Room, State Capitol, Sacramento, California 95814, 916-445-2323.

Update acknowledges the Trial Courts' Consolidated Legislation Committee and the Administrative Office of the Courts' (AOC) Office of Governmental Affairs and Office of Communications for this summary.

ASSEMBLY BILLS

(in order of bill number)

BATTERERS' TREATMENT PROGRAMS

AB 217, Pavley, Chapter 2
PEN 1203.097

Requires a defendant sentenced to a batterers' treatment program to attend consecutive weekly sessions—unless granted an excused absence for good cause by the program for no more than 3 individual sessions during the entire program—and to complete the program within a period of 18 months unless, after a hearing, the court finds good cause to modify these requirements.

CHILD WELFARE SERVICES: CASELOAD STANDARDS

AB 364, Aroner, Chapter 635
W&I 10609.7

Requires the Human Resources Workgroup of the Child Welfare Services Stakeholders' Group to include in its next planned report a discussion of the strategies required to establish and implement minimum caseload standards for all child welfare service areas.

ADOPTION: NONRESIDENT PETITIONERS

AB 746, La Suer, Chapter 1112
FAM 8714, 8715, 8802, 8807

Provides that if the petitioner is not a resident of this state, he or she may file a petition for an agency adoption or an independent adoption in the county in which the child resides. Requires that a home-study report conducted by a licensed adoption agency or another authorized agency in the state where a nonresident petitioner lives be reviewed and endorsed by the child welfare department in the county where the petition is filed.

EDUCATIONAL DECISIONS: COURT APPOINTMENT

AB 886, Simitian and Daucher, Chapter 180
W&I 361, 726; PRO 2662

Requires the court to appoint a responsible adult to make educational decisions for a minor whose parent or guardian's rights to make those decisions have been specifically limited by the court. Establishes the circumstances under which that individual's decision-making authority ceases and provides that he or she may not have a conflict of interest in representing the child on educational matters.

JUVENILE DEPENDENCY: DENIAL OF REUNIFICATION SERVICES; FOSTER CARE

AB 1694, Committee on Human Services, Chapter 918
W&I 309, 361.5; H&S 1521.5

Requires that denial of reunification services for parents and guardians in juvenile dependency cases based on a history of drug and alcohol abuse and resistance to treatment must involve court-ordered treatment during a three-year period prior to the filing of the petition. Adds references to nonrelative extended family member caregivers in numerous foster care-related sections where they were omitted. Extends foster care training.

SMOKING: PLAYGROUNDS

AB 1867, Vargas, Chapter 527
H&S 104495

Expands the prohibited smoking or disposal area of tobacco-related waste to within 25 feet of a playground or a "tot lot" sandbox area.

DOMESTIC VIOLENCE: BEST PRACTICES

AB 1909, Cohn, Chapter 192
FAM 6219

Requires, contingent on availability of adequate city or county funding, the development of a demonstration project in the San Diego and Santa Clara superior courts to identify best practices in civil, juvenile, and criminal court cases involving domestic violence. Also open to other courts that are interested and able to participate. Participating courts are required to report their findings and recommendations to the Judicial Council and the Legislature by May 1, 2004.

LICENSE PLATES: VICTIMS OF DOMESTIC ABUSE

AB 1915, Lowenthal, Chapter 80
VEH 4467

Requires the DMV to provide new license plates to a vehicle owner who presents documentation showing that he or she is a victim of domestic abuse. Exempts special-interest license plates.

GENDER-RELATED VIOLENCE
AB 1928, Jackson, Chapter 842
CIV 52.4

Creates a newcivil cause of action for victims of gender-motivated violence—defined as a criminal offense involving (1) physical force against a person or property committed at least in part on the basis of the victim's sex, gender, or sexuality or (2) a physical intrusion or invasion of a sexual nature, committed under coercive conditions. Specifies that it does not establish any civil liability of a person because of his or her status as an employer, unless the employer personally committed an act of gender violence.

PROBATE: GUARDIANSHIPS
AB 1938, Aroner, Chapter 1118
FAM 210, 3041, 8804; PRO 1000, 1601, 1610; CCP 391.7

Clarifies that the vexatious litigant provisions of the Code of Civil Procedure apply to Family and Probate Code actions. Creates standards for awarding custody to a nonparent over the objection of a parent. Clarifies that the "mandatory return to parental custody" statute for children involved in failed adoptions is subject to these custodial standards.

INDEPENDENT LIVING PROGRAM: EMERGENCY REGULATIONS
AB 1979, Steinberg, Chapter 271
W&I 10609.4

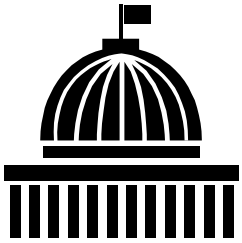
Requires the Department of Social Services to develop and adopt emergency regulations, in consultation with stakeholders, that counties will be required to meet when administering the Independent Living Program and that are achievable with existing resources.

PROTECTIVE ORDERS: SERVICE OF PROCESS
AB 2030, Goldberg, Chapter 1009
CCP 527.6; FAM 6222; GOV 6103.2

Requires the sheriff, upon request and at no charge, to serve protective orders, restraining orders, or injunctions when a the petition alleges domestic violence, stalking, or sexual assault. Requires the Judicial Council to prepare an application for petitioners who wish to use this service. Prohibits courts from charging a fee for filing a subpoena in connection with a protective order proceeding involving domestic violence, stalking, or sexual assault. Allows the sheriff to submit a billing for these services to the trial court in a manner prescribed by the Judicial Council. Provisions expire January 1, 2007.

EXPEDITED YOUTH ACCOUNTABILITY PROGRAM
AB 2154, Robert Pacheco, Chapter 110
W&I 660.5

Lifts the sunset for the Expedited Youth Accountability Program in Los Angeles County, as specified.



WORKPLACE PROTECTIONS: VICTIMS OF SEXUAL ASSAULT
AB 2195, Corbett, Chapter 275
LABOR 230, 230.1

Extends workplace protections allowing employees who are victims of sexual assault to take time off to attend to domestic violence–related issues.

FOSTER CARE OMBUDSPERSON
AB 2294, Liu, Chapter 1160
W&I 16162, 16164

Provides that the term for the appointed State Foster Care Ombudsperson be increased from two to four years, and permits reappointment for consecutive terms. Expands the duty of the office to include the submission to the Legislature of reports and complaints received by the office and of issues that arose while investigating those complaints. This information would also need to be made public by posting on the Web site of the Ombudsperson.

PRISONERS: TERMINATION OF PARENTAL RIGHTS: HEARING NOTICE
AB 2336, Negrete McLeod, Chapter 65
PEN 2625

Requires that a court order for a prisoner's temporary removal from an institution for the purpose of attending a court proceeding concerning the prisoner's parental rights be transmitted to the institution not less than 15 days before the order is to be executed.

CHILD CUSTODY ORDERS: PREVENTION OF INTERNATIONAL CHILD ABDUCTION
AB 2441, Bates, Chapter 856
FAM 3048

Requires that child custody orders include a clear description of the custody and visitation rights of each part and a provision, stating that violation of the order may result in criminal or civil penalties for the violating party. In cases in which a court becomes aware of facts that may indicate a risk of abduction of a child, requires the court to consider specified factors in determining the risk of abduction of the child and to consider imposing specified conditions to prevent the abduction.

CHILD ABUSE: TASK FORCE
AB 2442, Keeley, Chapter 1064
PEN 11174.4

Requires the creation of a task force to review the Child Abuse and Neglect Reporting Act and the Child Abuse Central Index and to report to the Attorney General and the Legislature by January 1, 2004. The task force would be chaired by an Attorney General designee and would include a representative of the Judicial Council.

VICTIMS OF CRIME: DOMESTIC VIOLENCE
AB 2462, Bates, Chapter 479
GOV 13960

Provides that a child who resides in a home where a crime of domestic violence has occurred may be presumed to have sustained physical injury, regardless of whether the child has witnessed the crime for purposes of indemnification by the

California Victim Compensation and Government Claims Board.

DOMESTIC VIOLENCE: PROTECTIVE ORDERS

AB 2563, Vargas, Chapter 66
PEN 1203.3

Changes the procedures required for a court to modify or terminate a domestic violence protective order that has been issued as a condition of a defendant's probation, increasing from two to five days the notice given to district attorneys for modification or termination of protective orders, and requiring courts to consider whether there has been any material change in circumstances since the commission of the crime.

CHILD ABUSE REPORTING

AB 2672, Leonard, Chapter 858
PEN 11166.01

Makes it an infraction, punishable by up to $5,000, for supervisors or administrators to knowingly impede or inhibit mandatory child abuse reporting duties.

DOMESTIC VIOLENCE: FIREARMS RELINQUISHMENT

AB 2695, Oropeza, Chapter 830
PEN 166, 12021, 12028.5, 12028.7

Requires—subject to the availability of resources—the Attorney General, working with the Judicial Council, the California Alliance Against Domestic Violence, prosecutors, law enforcement, probation, and parole, to develop a protocol for the enforcement of domestic violence restraining order–related firearm ownership provisions. Extends from 30 days to 60 days the period in which law enforcement can petition the court to retain a firearm seized as a result of a domestic violence incident, and allows law enforcement to seek an extension to 90 days for good cause.

DOMESTIC VIOLENCE: DEFINITIONS

AB 2826, Daucher, Chapter 534
PEN 836, 13700

Changes the Penal Code definition of "domestic violence" to delete the requirement that a minor in one of the specified relationships be emancipated to be included. Defines "elderly parent abuse" as abuse committed against a person who is 65 or older by a child or stepchild of the abuser, and requires law enforcement agencies to develop, adopt, and implement written policies and standards for responses to elderly parent abuse calls; requires that data collection and communication obligations of local agencies regarding domestic violence cases, as specified, would also apply to elderly parent abuse cases.

UNIFORM FAMILY SUPPORT ACT

AB 2934, Wayne, Chapter 349
FAM 4901, 4903, 4905-4906, 4909-4913, 4913.5, 4914, 4915, 4917-4922, 4924-4925, 4926, 4928, 4930, 4931, 4933, 4935, 4940-4942, 4945-4946, 4950-4951, 4953-4954, 4956, 4959-4961, 4964, 4965, 4970-4971, 4975

Revises and recasts provisions of the Uniform Family Support Act, including provisions dealing with personal jurisdiction, simultaneous proceedings, jurisdiction to modify support orders, the computation of support obligations stated in a foreign currency, determination of paternity, determination of a controlling support order, and an employer's compliance with two or more income-withholding orders. Effective only after congressional or federal agency adoption, not before July 1, 2004.

DISSOLUTION OF MARRIAGE: REVISION OF JOINT TAX LIABILITY

AB 2979, Committee on Revenue and Taxation, Chapter 374
FAM 2628; R&T 19006

Alters the limits on the court's authority to revise income tax liabilities in marital dissolution cases to preclude revision where the gross income of the couple exceeds $150,000 or where the liability of the relieved spouse exceeds $7,500.

COURT PROCEDURES

AB 3028, Judiciary Committee, Chapter 1008
CCP 228, 527.6, 527.8, 638, 1281.95, 1987; CORP 307, 5211, 7211,9211; FAM 2106, 3111; GOV 7.6, 68085, 68203.1, 20902.5, 68087.1, 69645, 69510, 69510.5, 69510.6; PEN 1328; PRO 1513.1, 1851, 1851.5; W&I 213.5

Among other provisions, includes family and juvenile law clean-up provisions that would: (1) allow courts to issue injunctions as well as temporary orders to protect nonparty household members when a party is seeking a civil or workplace harassment restraining order; (2) permit courts to reissue temporary protective orders in juvenile cases where it was not possible to achieve notice within the statutory limits; and (3) require the juvenile court to consider the domestic violence–related issues that a family court must consider when issuing orders concerning the period in which law enforcement can petition the court to retain a firearm seized as a result of a domestic violence incident custody or visitation. Requires that service on wards and dependents not in parental custody be made upon the designated agent for service of process at the child welfare department or the probation department under whose jurisdiction the minor has been placed. Clarifies the ability of minor's counsel in family law cases to receive child custody evaluation reports.

CHILD SUPPORT
AB 3032, Judiciary Committee, Chapter 927
FAM 3766, 4054, 4506, 7575, 17306, 17400, 17422, 17430, 17432, 17526, 17600, 17602, 17700, 17704, 17801; CCP 394; W&I 11476.2; PEN 11165.7

Authorizes local child support agencies (LCSAs) to record a notice of child support judgment. Requires an LCSA to complete an administrative review of alleged arrearages within a specified time period. Makes additional technical changes regarding child support.

FAMILY LAW
AB 3033, Judiciary Committee, Chapter 759
FAM 3600, 17506

Eliminates from consideration all statutory criteria except those pertaining to domestic violence when the court issues a temporary order for spousal support. Provides that the Department of Child Support Services will, upon implementation of the California Child Support Automation System, assume responsibility for the California Parent Locator Service and the Central Registry (currently operated by the Department of Justice).

SENATE BILLS
(in order of bill number)

CHILD SUPPORT ORDERS
SB 97, Kuehl, Chapter 539
FAM 155

Abrogates the holding in *Dupont v. Dupont* 88 Cal.App.4th 192 (2001) that a judgment in a child support action that creates an installment plan to pay off arrears converts the past-due amount to an installment judgment subject to interest only as the installments become due, and provides instead that interest on such past-due amount continues to accrue at the appropriate rate despite the existence of the payment plan.

CHILD CUSTODY MEDIATION
SB 174, Kuehl, Chapter 1077
FAM 3188

Requires, in at least four volunteer courts with family law filings in excess of 1,000 that currently employ a nonconfidential child custody mediation process, that initial child custody mediation sessions be confidential, with an allowance for subsequent recommending mediation if conducted by a different mediator. The four volunteer courts are to be determined by the Judicial Council. Implementation of these provisions is contingent upon funding in the Budget Act.

REPORTING CRIMES: HEALTHCARE PROVIDERS
SB 580, Figueroa, Chapter 249
PEN 11160, 11171, 11160.2

Requires that a standardized statewide form for reporting specified crimes be developed by the Office of Criminal Justice Planning (OCJP) in conjunction with law enforcement agencies, social service providers, and domestic violence advocates. Crimes to be reported on the form include self-injury, child abuse, domestic abuse, sexual assault, and elder abuse. In addition, the bill mandates that OCJP, in conjunction with specified agencies, organizations, and other appropriate experts, must establish medical forensic forms, instructions, and examination protocol for the victims of child physical abuse or neglect, as specified.

DOMESTIC VIOLENCE VICTIMS' SURVIVING RELATIVES: INCIDENT REPORTS
SB 1265, Alpert, Chapter 377
FAM 6228

Requires law enforcement to provide, on request, a free copy of any domestic violence incident reports and/or face sheet to specified surviving relatives or other representative when the victim is deceased. Requires any person requesting these documents to provide valid identification and, if the person is a representative of a deceased victim, evidence of the death of the victim.

STALKING
SB 1320, Kuehl, Chapter 832
PEN 646.9

Revises the definition of "stalking" to delete the requirement that a defendant intended to cause fear in a victim, and requires instead that a defendant knew or reasonably should have known that his or her conduct would place the victim in reasonable fear.

MEDICAL EVIDENTIARY EXAMINATIONS: VICTIMS OF CHILD ABUSE, SEXUAL ASSAULT, DOMESTIC VIOLENCE
SB 1324, Ortiz, Chapter 256
PEN 13823.93

Provides for the establishment of one hospital-based training center to train medical personnel on how to perform medical evidentiary examinations for victims of child abuse or neglect, sexual assault, domestic violence, elder abuse, and abuse and assault perpetrated against persons with disabilities. Requires the training to be made available to medical personnel, law enforcement, and the courts.

SPOUSAL SUPPORT: CRIMINAL PENALTIES
SB 1399, Romero, Chapter 410
PEN 270.6

Creates a misdemeanor offense for persons who have received notice of an order to pay spousal support and who leave the state without lawful excuse, to disobey the spousal support order.

CHILD WELFARE WORKER TRAINING: TEEN DATING VIOLENCE
SB 1505, Kuehl, Chapter 354
W&I 16206

Requires that an existing statewide coordinated training program for child protective service social workers include information on the indicators and dynamics of teen dating violence.

ADOPTIONS: TERMINATION OF PARENTAL RIGHTS
SB 1512, Scott, Chapter 260
FAM 7666, 7669, 7807, 7901

Requires that notice of a proceeding to terminate parental rights relating to an adoption be given to all possible natural fathers at least 10 days before the stated time for appearance. Makes an order dispensing with a father's consent to adoption conclusive and binding on the father. Stays proceedings related to custody and support, pending a final determination to declare a minor free for adoption. Allows licensed clinical social workers and marriage and family therapists to conduct adoption investigations. Enacts provisions governing the jurisdiction of a court of this state in adoption proceedings in cases where another state may have jurisdiction in the matter, and enacts provisions pertaining to venue in adoption matters.

CHILD WITNESS: CLOSED-CIRCUIT TELEVISION
SB 1559, Figueroa, Chapter 96
PEN 1347

Deletes the sunset date of January 1, 2003, in provisions of law that allow a minor under age 13 to testify by way of closed-circuit television under specified circumstances.

PROTECTIVE ORDERS
SB 1627, Kuehl, Chapter 265
FAM 6380, 6385; PEN 1203.097

Requires a law enforcement officer who serves a protective order to submit the proof of service directly into the Domestic Violence Restraining Order System within one business day and transmit the original proof of service form to the issuing court, as specified. If the person who served the protective order is not a law enforcement officer, and the court is unable to submit the proof of service directly into the Domestic Violence Restraining Order System, the bill further requires the court to transmit a copy of the proof of service to a local law enforcement agency within one business day of receipt and requires the local law enforcement agency to submit the proof of service directly into the Domestic Violence Restraining Order System. Requires the Judicial Council to include in its domestic violence information packets instructions for returning proofs of service, including mailing addresses and fax numbers.

SUPPORT: LACHES
SB 1658, Soto, Chapter 304
FAM 4502

Permits the application of the defense of laches in an action for child or spousal support only with respect to any portion of the judgment owed to the state.

SURROGATE PARENTS: COURT APPOINTMENT FOR WARDS AND DEPENDENTS
SB 1677, Alpert, Chapter 785
GOV 7579.5; W&I 358.1, 366, 366.1

Requires social studies and evaluations prepared by child welfare workers for dependent children to include a factual discussion of whether the rights of the parent or guardian to make educational decisions should be limited and whether there is a responsible adult available to make educational decisions. Requires the court to make factual determinations on the issue of educational decision-making authority, and to appoint a responsible adult to make those decisions if the rights of the parent are limited. Requires a local educational agency (LEA) to appoint a surrogate parent for a dependent child, when the court has specifically limited the rights of the parent or guardian, only if the court has not appointed a responsible adult to represent the child's interests. Allows an LEA to terminate a surrogate parent appointment if the person is not performing properly, and requires termination when the person has a conflict of interest with the child. Requires the Department of Education to develop a model training program for surrogate parents. Recommends that the Judicial Council adopt rules and standards to implement the court-related provisions.

CHILD CUSTODY INVESTIGATIONS: CHILD SEXUAL ABUSE
SB 1704, Ortiz, Chapter 305
FAM 3118; W&I 827

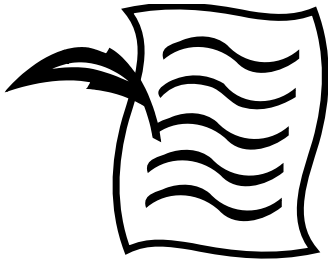
Provides that in any contested proceeding involving child custody or visitation rights, if the court has appointed a child custody evaluator, or if the court has referred the case for a full or partial court-connected evaluation, investigation, or assessment, and the court determines that there is a serious allegation of child sexual abuse, the court must require an evaluation, investigation, or assessment. Also requires the court to consider only specified evaluations, investigations, or assessments in determining custody or visitation rights when the court has determined that there is a serious allegation of child sexual abuse, except as specified.

DOMESTIC VIOLENCE: CHILD PROTECTIVE SERVICES PROTOCOLS
SB 1745, Polanco, Chapter 187
PEN 11167.5, 13732

Requires child welfare agencies and law enforcement agencies to develop protocols in collaboration with other groups as to how law enforcement and child welfare agencies will cooperate in their response to incidents of domestic violence in homes where a child resides.

CHILDHOOD SEXUAL ABUSE: STATUTE OF LIMITATIONS
SB 1779, Burton, Chapter 149
CCP 340.1

Provides that the extended statute of limitations in childhood sexual abuse civil cases against a third party who is not the perpetrator of the sexual abuse extends beyond age 26 of the victim, when the third party knew, had reason to know, or was otherwise on notice of any unlawful sexual contact by an employee, volunteer,



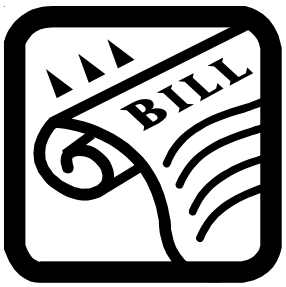
representative or agent and failed to take reasonable steps to avoid future acts of unlawful sexual contact by that employee or agent. To preserve a claim in that event, a suit must be filed within three years from the date the victim discovers or reasonably should have discovered that the psychological injury or illness occurring after age 18 was caused by the childhood abuse. Applies retroactively and provides victims of childhood sexual abuse a one-year window to bring an action against a third party, as provided above, when that claim would otherwise be barred solely because the statute of limitations has or had expired, and a cause of action is commenced within one year of January 1, 2003. This revival of claims would not apply to any claim that had been litigated to finality on the merits.

FIREARMS
SB 1807, Chesbro, Chapter 833
PEN 12028.5

Expands the circumstances in domestic violence cases requiring seizures of firearms and weapons to include any lawful search. Lowers to a preponderance of the evidence the standard of proof required in actions brought by owners for the return of those items. Provides guidelines for the return of a weapon by the court.

EMERGENCY PROTECTIVE ORDERS
SB 1895, Escutia, Chapter 510
PEN 13823.16

Provides that the Office of Criminal Justice Planning must closely collaborate with an advisory council whose membership includes domestic violence victims', providers of services to battered women, law enforcement, and others in administering the Comprehensive Statewide Domestic Violence Program.



COMMUNITY PROPERTY: REAL PROPERTY TRANSACTIONS
SB 1936, Burton, Chapter 310
FAM 721

Subjects a husband or wife who enters into any real property transaction with the other to those general rules governing fiduciary relationships when the transaction involves the administering of a trust.

DEPENDENCY PROCEEDINGS: NOTICE
SB 1956, Polanco, Chapter 416
W&I 290-298, 311, 312, 335-337, 360, 362.3, 366.23, 387

Reorganizes and revises provisions relating to notice in juvenile dependency proceedings.

PRIVILEGE: ELECTRONIC COMMUNICATION
SB 2061, Morrow, Chapter 72
EVID 912, 917, 952

Adds sexual assault victim–counselor and domestic violence victim–counselor relationships to those privileges with a presumption of confidentiality, thereby shifting the burden of proof to the opponent to establish that a communication was not confidential. Expands the current provision for lawyer-client privilege that electronic transmission of a communication does not render the communication nonprivileged to include all Evidence Code section 917 privileged relationships.

Summary of Newly Adopted Rules, Forms, and Standards

The following is a list of rules, forms, and standards adopted by the Judicial Council on October 30, 2002, that directly affect juvenile and family proceedings. For a complete list of rules, forms, and standards, please visit *www.courtinfo.ca.gov.*

■ **Appointment of CAPTA Guardians Ad Litem for Children in Judicial Proceedings Involving Abuse or Neglect of a Child (amend Cal. Rules of Court, rules 1401 and 1438; adopt rule 1448)**

Adopted new rules and amended existing rules to comply with legislation and the council's request to define the role, responsibilities, and limitations of the CAPTA guardians ad litem appointed for children in such cases, specifying whether attorneys or Court Appointed Special Advocates must be appointed in that capacity.

■ **California Youth Authority Commitment (amend Cal. Rules of Court, rule 1494; adopt rule 1494.5; adopt form JV-732)**

Amended a rule, adopted a rule, and adopted a new form to establish a procedure for making required judicial findings and orders when committing a youth to the California Youth Authority (CYA). The form includes necessary findings and case-specific information that will enable CYA to provide a youth with necessary and appropriate discipline and treatment.

■ **Child Support: New *Minutes and/or Order or Judgment* and related forms (approve forms FL-692, FL-693, and FL-694 for optional use in lieu of mandatory forms; revise form FL-450)**

Approved optional forms for use in lieu of mandatory forms to better serve those courts that would prefer to generate the most common orders in the courtroom in governmental child support action. Revised a form to add a warning that submission of the form to the court will not result in modification of child support.

■ **Domestic Violence: Criminal Protective Orders and Rules for Court Communication Regarding Child Custody Orders (adopt rule 5.500; adopt form CR-165; revise and renumber form MC-220)**

Adopted a rule and a form and amended an existing form to comply with legislation and reduce the likelihood of conflicting orders being issued regarding the same parties.

■ **Family Law: *Proof of Service of Summons; Application and Order for Reissuance of Order to Show Cause* (revise form FL-115; adopt form FL-306/JV-251)**

Revised a form and adopted a new form to reflect changes in filing procedures and required forms and to provide a method for reissuing orders to show cause in cases not involving domestic violence.

■ **Family Law Rules: Renumbering and Revision of Title Five of the California Rules of Court (renumber, amend, and repeal Cal. Rules of Court, per attached table; amend rule 233)**

Renumbered, amended, and repealed family law rules to make them consistent with other Judicial Council rules, reflect changes in law and procedure, and make them easier to read and more accessible to court users.

■ **Governmental and Family Law: New and Revised Forms for Initiating and Processing Child Support Cases (revise form FL-600; adopt form FL-683)**

Revised a form to make it more understandable for litigants and to more accurately track statutory language. Adopted a new form, adapted to governmental child support actions and notices mandated in such actions.

■ **Juvenile Delinquency Forms: *Promise to Appear—Juvenile and Deferred Entry of Judgment—Dismissal and Sealing Order* (revise form JV-635; approve form JV-755)**

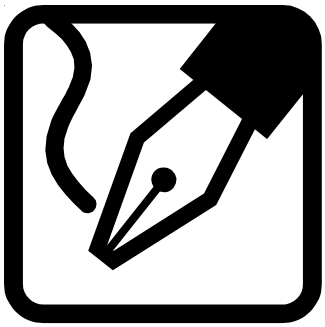
Revised a form to more accurately state the law and approved an optional form to fulfill the courts' need for guidance on dismissing and sealing records after completion of the deferred entry of judgment process.

■ **Juvenile Law: Child Custody and Visitation Orders (revise forms JV-200 and JV-205)**

Revised forms to clarify case identification and statutorily defined responsibilities and to identify a form's correct authorizing statute and rule.

■ **Juvenile Law: Delinquency Foster Care (amend Cal. Rules of Court, rules 1429.3 and 1496; adopt rules 1496.2 and 1496.3; revise form JV-625)**

Amended and adopted rules and revised a form to comply with statutory requirements and to more thoroughly describe procedures for obtaining a guardianship of a ward.



■ **Juvenile Law: Joint Assessment Procedure for Children (adopt Cal. Rules of Court, rule 1403.5)**

Adopted a rule to establish a joint assessment procedure required by legislation.

■ **Juvenile Law: Local Psychotropic Medication Forms (amend Cal. Rules of Court, rule 1432.5)**

Amended a rule and clarified a form regarding the administration of psychotropic medication to children under the jurisdiction of the juvenile dependency court.

■ **Juvenile Laws Technical Amendment (amend Cal. Rules of Court, rule 1432)**

Amended a rule to correct an erroneous code reference.

■ **Juvenile Police Records: *Notice for Release of Records and Objection and Petition to Obtain Law Enforcement Agency Report* (approve form JV-580; revise form JV-575)**

Approved a form and revised a form to ensure compliance with legislation regarding notification for release of a child's juvenile police records.

■ **Juvenile Restraining Orders (amend Cal. Rules of Court, rule 1429.5; revise forms JV-245, JV-250, FL-306/JV-251, and DV-800/JV-252)**

Amended a rule and revised forms to comply with recent amendments to the Welfare and Institutions Code, clarify juvenile court procedures, and include family law procedures regarding firearm relinquishment and reissuance of temporary restraining orders.

■ **Plain-Language Domestic Violence Restraining Order Forms and Adoption Forms**

Adopted plain-language forms for domestic violence restraining orders and adoption. The newforms should be easier for self-represented litigants to complete and understand than the current forms.

The domestic violence restraining order forms were revised to comply with Assembly Bill 2030, which, upon the protected person's request, requires law enforcement to serve restraining orders without charge.

The adoption forms have been adapted to comply with Assembly Bill 25, which includes provisions that allow a domestic partner to adopt his or her partner's child using the stepparent adoption process.

■ **Probate Forms: Technical Revisions of Decedent's Estate, Conservatorship, and Guardianship Forms (revise forms DE-160/GC-040, GC-310, and GC-313)**

Revised three forms to conform to recent legislation and to make technical changes and corrections.

■ **Probate Proceedings: Rules Governing Notice, Pleadings, Inventory and Appraisal, Accounts, Bonds, and Compensation in Probate Proceedings and Concerning Compensation of Attorneys Representing Minors and Incompetent Persons (adopt Cal. Rules of Court, rules 7.50–7.55, 7.103, 7.104, 7.454, 7.550, 7.700–7.707, 7.750–7.756, and 7.955; amend rules 7.1–7.3, 7.102, 7.204, and 7.501; and amend the titles of chapters 2, 12, 15, and 16 of title 7)**

Adopted and amended rules and amended chapter titles to support the goal of modernizing the management and administration of the courts through uniform rules of practice and procedure in probate proceedings.

Delinquency Case Summaries

Cases Published From July 16 to October 4, 2002

In re Kentron D. **(Sept. 12, 2002) 101 Cal.App.4th 1381 [125 Cal.Rptr.2d 260]. Court of Appeal, Second District, Division 2.**

The juvenile court found the child to have violated the conditions of his probation following a contested hearing held upon the filing of a Welfare and Institutions Code section 777 notice of probation violation.

The youth had been placed in a camp community placement program under certain conditions, including that he obey all laws, orders, and instructions of the probation officer and camp staff and not participate in any type of gang activity. The notice reported five counts of the minor's failure to abide by these conditions. The reports of the violations contained descriptions of the incidents from several probation officers as well as extrajudicial statements made by the minor. When the section 777 notice was filed and the matter set for a hearing, defense counsel objected to the admission of the report in evidence and requested that all of the probation officers be present in court at the hearing.

At the hearing, the prosecutor stated that she would "submit for the violation on the report" and that she had four probation officers from the camp "available for cross on the issues in the report." Defense counsel objected on the grounds that the contents of the section 777 notice constituted inadmissible hearsay and that admission of the report into evidence would deny the minor his federal and state constitutional right to cross-examine the witnesses testifying against him under *People v. Arreola* (1994) 7 Cal.4th 1144 (*Arreola*). He claimed that the youth did not have the burden of calling witnesses to cross-examine them and refused to do so. After he informed the court that he would not call any witnesses, the court overruled his objection and admitted the report into evidence. No other evidence was offered by the prosecution.

On appeal, the youth contended that he was denied his due process right to confront and cross-examine witnesses because the allegations in the section 777 notice were admitted in lieu of the live testimony of percipient witnesses and there was no showing that the probation officers who allegedly observed the misconduct were unavailable. He further argued that because these extrajudicial statements were the only evidence offered by the prosecution, reversal of the order finding him in violation of probation was required.

The Court of Appeal reversed the decision of the juvenile court and concluded that the admitted evidence failed to satisfy the requirements of section 777(c). That section, as amended by Proposition 21 effective March 8, 2000, provides in part that "the court may admit and consider reliable hearsay evidence at the hearing to the same extent that such evidence would be admissible in an adult probation revocation hearing, pursuant to the decision in *People v. Brown*, 215 Cal.App.3d [452] (1989) and any other relevant provision of law." In *Brown*, the court concluded that the testimony of a police officer, which concerned findings in the chemist's report that the substance recovered from the defendant was cocaine, was admissible evidence despite defendant's claim that it violated his right to cross-examine a witness and to have only reliable, nonhearsay testimony adduced against him. The appellate court, however, distinguished *Brown* from the present case on the basis of the California Supreme Court's finding in *Arreola* that the principles governing the admissibility of hearsay that takes the place of live testimony are different from those governing hearsay that consists of documents such as laboratory reports, invoices, or receipts, where the witness's demeanor is not a significant factor.

In *Arreola*, the Supreme Court considered the admissibility of the defendant's preliminary hearing transcript upon which the probation violation charges were based. Relying on both U.S. Supreme Court decisions and its own previous decisions, the appellate court concluded that a defendant at a probation revocation hearing has the right to confront and cross-examine adverse witnesses and that due process requires a showing of unavailability or other good cause before hearsay in the form of prior testimony can be admitted.

Applying these principles, the appellate court determined that the admission of the hearsay allegations constituted an abuse of discretion as there was no showing of unavailability or other good cause sufficient to dispense with the right to confrontation. To do so denied the youth, as well as the trier of fact, the opportunity to observe the demeanor of his accusers, one of the essential components of the right to confrontation. The appellate court further rejected the People's argument that three of the percipient witnesses were available because they were in court during the hearing and were willing to be cross-examined had defense counsel not refused. The appellate court explained that there was nothing on which to cross-examine since no witness had given testimony either establishing a foundation for the hearsay evidence or accusing appellant of any misconduct. The court acknowledged defense counsel's argument that the youth should not have been required to call witnesses against him to the stand when the prosecution did not. The court therefore reversed the juvenile court's decision, concluding that because the hearsay evidence was the sole evidence on which the finding of violation was based, it could not be found beyond a reasonable doubt that the error did not contribute to the finding of violation.

In re Oscar R. **(Sept. 12, 2002) 101 Cal.App.4th 1370 [125 Cal.Rptr.2d 269]. Court of Appeal, Second District, Division 2.**

The juvenile court revoked a youth's probation and sentenced him to commitment at the California Youth Authority (CYA) under the authority of Welfare and Institutions Code section 777.

The youth had been charged with three counts of robbery and one count of possession of a firearm by a minor. The juvenile court had sustained the petition on two counts of robbery and possession of a firearm and ordered that the youth be placed

in the camp community placement program (camp) for a period not to exceed 16 years. Additionally, as a condition of probation, the youth was ordered to avoid contact with the robbery victims.

The youth was charged two times with public intoxication. After the second conviction for public intoxication, the juvenile court sentenced the youth to two months at the CYA, and the matter was continued for a contested disposition and a probation violation hearing. During the hearing, the probation officer testified that the victim told him that the youth had made a threatening call to the victim, telling the victim to "watch his back." Based on this evidence, the juvenile court held that the youth's contact with the victim, in violation of the probation order (for the original offense), was of serious concern and warranted a more restrictive placement. Therefore, the juvenile court revoked the youth's placement in camp and sentenced the youth to the CYA (based on the probation violation). The youth appealed the juvenile court's decision, arguing that the court's application of section 777 violated the ex post facto clause of the U.S. and California constitutions, the juvenile court erred in admitting hearsay testimony, and amended section 777 violated California's single-subject rule.

The Court of Appeal affirmed the juvenile court's decision. The youth argued that the juvenile court's application of section 777 violated the ex post facto clause because the original underlying offense occurred before enactment of the statute. The appellate court rejected the youth's argument, stating that the ex post facto clause would be violated only if all relevant events occurred before the enactment of amended section 777. The appellate court held that the ex post facto clause was not violated because the youth violated the terms of his probation one year after the enactment of amended section 777. Furthermore, the appellate court stated that the juvenile court did not abuse its discretion in allowing the "reliable hearsay testimony" of the probation officer. The court noted that for hearsay evidence to be admissible at a probation revocation hearing the evidence must be reliable and may be admitted only for "good cause." The appellate court asserted that the testimony about the victim's statements was reliable because the probation officer had described that this was supported by a written report indicating the date he met with the victim and the mother. In addition, the court held that there was "good cause" to admit the hearsay testimony because the victim's presence at the hearing would have exposed the victim to a risk of harm. Finally, the appellate court rejected the youth's argument that amended section 777 violates California's single-subject rule, indicating that in *Manduley* (2002) 27 Cal.4th 537, the California Supreme Court held that amended section 777 satisfies the requirements of that rule. Therefore, the appellate court affirmed the juvenile court's decision ordering the youth to be committed to the CYA under the authority of amended section 777.

***In re Tino V.* (Aug. 22, 2002) 101 Cal.App.4th 510 [124 Cal. Rptr.2d 312]. Court of Appeal, Second District, Division 6.**

The juvenile court committed a youth to the California Youth Authority (CYA) and extended his sentence until the age of 25.

The juvenile court had sustained a Welfare and Institutions Code section 602 petition and found the youth guilty of committing two counts of assault with a deadly weapon. The youth was 14 years old when he committed the offenses. The court then placed the youth on probation in the custody of his parents. After the youth failed to reform during probation, the court committed him to the CYA for a maximum period of five years and six months. The court decided that assault with a deadly weapon is listed in Welfare and Institutions Code section 707 and that the CYA's jurisdiction extended over the youth until age 25.

The youth appealed the juvenile court's decision, arguing that the court was not authorized to commit him to the CYA until the age of 25 because he was only 14 when he committed the offenses. The youth conceded that his offenses are listed in section 707(b), but indicated that section 707(b) applies to minors 16 years of age or older. The youth argued that because section 1769(b) (describing Department of Youth Authority discharge) refers to section 707(b), the extended CYA commitment must also apply only to minors 16 years of age or older and therefore must not apply to him.

The Court of Appeal affirmed the decision of the juvenile court, authorizing the youth's commitment to the CYA until the age of 25. The appellate court stated that both sections 607(b) (describing retention of jurisdiction) and 1769(b) refer to the offenses in section 707(b) only to designate the offenses that trigger extended commitments. Both sections 607 and 1769 refer to section 602, but they do not refer to section 707's 16-year age requirement. Section 602(a) applies to any person under the age of 18. Therefore, the appellate court concluded that since the youth was 14 when he committed the offenses, he fell within section 1769 and section 607. The appellate court reasoned that in interpreting section 607(b), the court in *In re Julian O.* (1994) 27 Cal.App.4th 847 indicated that the Legislature intended to extend the scope of section 607 to minors of all ages. The *In re Julian* court noted that section 607 previously applied only to older minors, but that the Legislature amended it in 1982 to eliminate the language restricting the statute's application to minors 16 or older. Furthermore, *In re Julian* asserted that section 707(b) "has nothing to do with commitments to the CYA" and that its purpose is instead to list offenses that, when committed, "trigger a presumption that the minor is unfit to be dealt with under the juvenile court law." The appellate court adopted *In re Julian's* interpretation of section 607 and indicated that this reasoning also applied to section 1769. Accordingly, the court rejected the youth's argument that *In re Julian* was inapposite because the appellate court did not review section 1769, which has a different purpose and result than section 607. Quoting the legislative history, the appellate court in this case concluded that section 607 and 1769 were amended to "'delete the language limiting the application of the provision to persons who were 16 years of age or older at the time of the offense' and to increase the juvenile court's retention of jurisdiction and CYA commitments to age 25." The

appellate court held that the juvenile court properly applied sections 607 and 1769. Therefore, the appellate court affirmed the juvenile court's order committing the youth to the CYA until the age of 25 in accordance with section 1769(b).

***In re Johnny M*. (Aug. 5, 2002) 100 Cal.App.4th 1128 [123 Cal.Rptr.2d 316]. Court of Appeal, Second District, Division 8.**

The juvenile court ordered a youth, who was declared a ward of the court, to pay restitution to the Downey Unified School District after the youth admitted that he had damaged school property.

The youth came within the provisions of Welfare and Institutions Code section 602 when he entered a middle school, along with three other juveniles, on two occasions with the intent to commit larceny. At the dispositional hearing the minor admitted to the allegations of larceny in order to participate in the deferred entry of judgment program. The youth was declared a ward of the court pursuant to section 602 and ordered confined for a period not to exceed three years, eight months. Entry of judgment was deferred and the minor was placed on probation, during which he was allowed to live at home. The terms of probation included a provision requiring the youth to make reparation on "all related losses as determined by the Probation Officer."

Several days before the dispositional hearing, the youth was expelled from school because his mother could not afford to pay $1,745, the prorated portion of restitution requested by the school district. At the youth's request, a restitution hearing was set. At this hearing the director of maintenance for the school district testified that after investigating the two burglaries, he concluded that the school's total losses were $3,071, which included changing the locks and keys of the classrooms, overtime payment to custodians, and payments to salaried employees for cleanup work. The juvenile court found the school's loss to be at least $3,071.14, observing that the school spent over $3,000 in "just man-labor and part costs" alone. Therefore, the court held that the school district was entitled to restitution in the amount of $3,071.14, plus any additional amounts for damaged or stolen items as determined by the probation officer. The court also ordered the probation officer to determine the youth's prorated share of this amount.

The youth appealed the decision of the juvenile court, arguing that the court's restitution order improperly included costs other than out-of-pocket expenses incurred by the district and, therefore, the order was not authorized under Welfare and Institutions Code section 730.6. The youth argued that payments based on the number of hours worked on cleanup by salaried employees and the pro rata share of the benefits that these employees are entitled to were improperly included in the restitution order.

The Court of Appeal affirmed the decision of the juvenile court, stating that section 730.6's mandate that restitution be ordered for all "economic losses" permits reimbursement for such labor costs. The appellate court emphasized that section 730.6(a)(1) states that a victim should receive restitution for "any economic loss" incurred as a result of the minor's conduct. Furthermore, the court pointed out that section 730.6(h) states that each victim should be reimbursed for all determined "economic losses" incurred as a result of the minor's conduct. Indicating that the standard of review of a restitution order is abuse of discretion, the appellate court held that the plain meaning of the statute contradicts the minor's argument that restitution should be limited to out-of-pocket expenses. The court reasoned that under section 730.6 the governing test is "economic losses," not "monies expended." Furthermore, the appellate court asserted that both Proposition 8 and "extensive case authority" indicate that restitution statutes are to be construed broadly and liberally. Particularly, the court found the *Dalvito* case, (1997) 56 Cal.App 4th 557, instructive. In *Dalvito*, the Court of Appeal ruled that the victim need not demonstrate out-of-pocket losses to qualify for a restitution award. Therefore, the appellate court adopted an expansive interpretation of "economic losses" under section 730.6, concluding that "a restitution order may also properly include the reasonable value of employee work product lost as a result of the criminal conduct of another, be that person a minor or adult." The appellate court reasoned that any other rule would encourage victims to incur out-of-pocket expenses rather than try to repair damage to property in house, which would be problematic due to the unlikelihood of their actually receiving reimbursement from a criminal defendant.

The appellate court also distinguished the case of *People v. Friscia* (18 Cal.App 4th 834), which the youth relied upon, stating that *Friscia* was different because it involved restitution that was expressly defined in former Penal Code section 1203.04. The court noted that section 730.6, which applies to the youth's case, does not expressly define restitution but instead calls for compensating the victim for all "economic losses" incurred. Furthermore, the appellate court indicated that section 730.6(a)(1) uses the word "including" before the list of kinds of economic losses that a victim can be reimbursed for. The court asserted that this use of the word "including" expressed the Legislature's intention to not limit the court to the kinds of losses specified and to allow the court broad discretion to determine the victim's economic losses. Therefore, the appellate court held that the juvenile court properly exercised its discretion in granting the school restitution for the labor costs of salaried employees who repaired the damages caused by the youth. The appellate court affirmed the juvenile court's decision, awarding the school restitution in the amount of $3,071.14, plus any additional amounts for damaged or stolen items as determined by the probation officer.

***In re Ryan D*. (July 30, 2002) 100 Cal.App.4th 854 [123 Cal.Rptr.2d 193]. Court of Appeal, Third District.**

The juvenile court found that a youth had violated Penal Code section 422 (threatening to commit a crime that will result in death or serious bodily injury) and Health and Safety Code section 11357 (possessing more than 28.5 grams of marijuana). Subsequently, the youth was made a ward of the court and was placed on home probation.

A peace officer assigned to a high school had issued the youth a citation for possessing marijuana off campus during school hours. Angry that the officer had cited him for marijuana possession, one month later the youth painted a violent picture of the officer and turned it in for an art class project. The painting depicted the youth shooting the officer in the back of the head, with pieces of her face and flesh being blown away. The teacher took the picture to the assistant principal, who in turn showed the picture to the peace officer. The peace officer then became concerned about her safety. When confronted about the painting, the youth stated that the painting was just an expression of his anger over having gotten into trouble because of the officer. The youth also indicated that he had not expected the painting to be shown to the officer and he had not intended to scare her. The youth had turned the picture in expecting to receive a grade or credit. However, while being questioned by the assistant principal, the youth agreed that it was reasonable to expect that the officer would eventually see the picture. Thus, the juvenile court held that the youth had violated Penal Code section 422 because there was a possibility that the youth had had the dual intent of turning the picture in for a grade and threatening the officer. The youth appealed the decision of the juvenile court, contending that the painting did not constitute a criminal threat under section 422 because he did not intend to threaten to kill the officer.

The Court of Appeal reversed the juvenile court's decision finding the youth had violated section 422. The appellate court stated that to prove a violation of section 422, the prosecution had to establish that: "(1) the minor 'willfully threatened to commit a crime which will result in death or great bodily injury to another person,' (2) the minor made the threat with the 'specific intent that the statement … is to be taken as a threat, even if there is no intent of actually carrying it out,' (3) the threat, which may be 'made verbally, in writing, or by means of an electronic communication device,' was 'on its face and under the circumstances in which it [was] made … so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat,' (4) the threat actually caused the person threatened 'to be in sustained fear for his or her own safety or for his or her immediate family's safety,' and (5) the threatened person's fear was 'reasonable' under the circumstances." The appellate court stated that in applying the established legal standards to the evidence in this case, two factors must be kept in mind: (1) section 422 cannot be applied to constitutionally protected speech but must be "narrowly directed only to threats that pose a true danger to society," and (2) the statutory definition of the crime proscribed by section 422 requires determining the facts and then balancing them to determine whether, viewed in their totality, the circumstances are sufficient to meet the requirement that the communication "convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat."

The appellate court concluded that the evidence did not establish that the youth intended to convey a threat to the officer, it only established that the youth took the painting to class and turned it in for credit. He did not specifically intend for a threat to be conveyed to the victim. The court further held that the painting did not convey "a gravity of purpose and immediate prospect of the execution of a crime that would result in death or great bodily injury" to the officer. The appellate court reasoned that turning in a violent painting to receive class credit would be a "rather unconventional and odd means of communicating a threat." Furthermore, the court stated that threats are usually made in the presence of another or while the perpetrator "is in a rage." In this case, the youth drew the painting a month after the officer got him in trouble; no evidence suggested that the youth remained in a rage for the entire month or that he intended the picture as a threat to the officer. The appellate court also pointed out that the youth did not display the painting where the officer could see it or communicate with the officer to advise her that she should see the painting. Therefore, the court held that "viewed in the light most favorable to the judgment," the "totality of the circumstances" establishes that the youth could have foreseen the possibility that the officer would view the painting. However, the court held that the evidence was not sufficient to establish that (1) at the time he acted, the youth had the specific intent that the painting would be shown to the officer or (2) that the painting was so "unequivocal" as to convey an "immediate" threat of the execution of a crime against the officer. Accordingly, the appellate court reversed the juvenile court's conviction of the youth for violating Penal Code section 422. The court affirmed the finding that the youth violated Health and Safety Code section 11357(b).

Dependency Case Summaries

Cases Published From July 16 to October 4, 2002

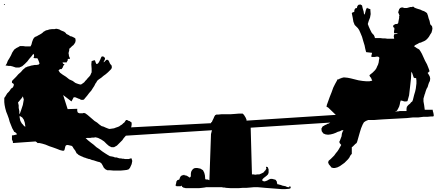
In re Charles T. **(Oct. 4, 2002) 102 Cal.App.4th 869 [125 Cal.Rptr.2d 868]. Court of Appeal, Third District.**

The juvenile court terminated a mother's parental rights and freed the child for adoption.

The Sacramento County Department of Health and Human Services (DHHS) had removed the child from the mother's custody soon after birth because both the mother and the child had tested positive for cocaine. The mother had a long-term substance abuse problem and had given birth to children who tested positive for drugs in the past. At the detention hearing, the juvenile court appointed counsel for the child but did not appoint a guardian ad litem, and the mother did not object. At the jurisdictional/dispositional hearing, the juvenile court denied reunification services to the mother, due to her chronic substance abuse and failure to reunify with the child's siblings, and set a Welfare and Institutions Code section 366.26 hearing. At the section 366.26 hearing, the court terminated the mother's parental rights and selected a permanent plan of adoption for the child. Again, a guardian ad litem was not appointed for the child during the dispositional hearing or the section 366.26 hearing, and the mother did not object. The mother appealed the juvenile court's decision terminating her parental rights on the ground that the juvenile court failed to appoint a guardian ad litem for the child pursuant to recently enacted section 326.5. According to the mother, the new law requires appointment of an attorney or Court Appointed Special Advocate (CASA), in addition to counsel appointed to represent the child.

The Court of Appeal affirmed the juvenile court's decision terminating the mother's parental rights and freeing the child for adoption. The appellate court noted that although the mother had standing, failure to appoint a guardian ad litem is subject to waiver if not raised in the trial court. However, the appellate court exercised its discretion to address the merits of the case due to the importance of the guardian ad litem issue. The appellate court indicated that, in 1974, Congress passed the Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. § 5101) to provide federal funds to the states for the purpose of identifying, preventing, and treating child abuse and neglect. One of the criteria for states to receive CAPTA funding is the appointment of a guardian ad litem to represent the child in each and every case involving an abused or neglected child. California promptly passed section 326 to establish programs in compliance with CAPTA; however, due to an oversight, the requirement for a guardian ad litem was not included, and this legislation was later amended to add section 326.5, which includes this requirement. Based on both CAPTA and section 326.5, as well as the comments from the Judicial Council and legal commentators, the appellate court concluded that the function of the guardian ad litem for a minor in dependency proceedings is distinct from that in other civil adversarial proceedings. The appellate court reasoned that dependency proceedings are not adversarial as to the minor and the role of a guardian ad litem in dependency proceedings is more limited, being determined primarily in the context of qualifying for federal funding.

Furthermore, the appellate court held that Congress, in enacting CAPTA's requirement for appointment of a guardian ad litem in abuse and neglect cases, intended only that an individual with the legal knowledge or experience found in an attorney or a CASA be appointed to represent and protect the interests of the child. The appellate court rejected the mother's argument that section 326.5 requires the appointment of a guardian ad litem in addition to counsel, reasoning that, in enacting CAPTA, Congress was simply mandating some kind of independent representation for the minor. The court stated that a child's legal counsel can also act as a dependency guardian ad litem for the child because the role of counsel as described in Welfare and Institutions Code section 317 is similar to the role of a traditional adversarial guardian ad litem. The court also asserted that reading CAPTA to require both legal counsel and a separate attorney acting as guardian ad litem to protect the child's interests would cause a substantial expenditure of resources and would reduce funding for the care and treatment of abused and neglected children. Accordingly, the appellate court affirmed the juvenile court's decision terminating the mother's parental rights on the ground that appointment of a separate guardian ad litem for the child was not required.



In re Celine R. **(Sept. 30, 2002) 102 Cal.App.4th 717 [125 Cal.Rptr.2d 630]. Court of Appeal, Fifth District.**

The juvenile court terminated parental rights and freed the children for adoption after denying counsel's request that the matter be continued to consider the applicability of Welfare and Institutions Code section 366.26(c)(1)(E) and that she be relieved from representing two of the three children due to a conflict of interest.

The juvenile court had adjudged three girls juvenile dependents and removed them from parental custody. Counsel represented the interests of all three children in that proceeding. The eldest child, a half-sister to the two younger girls, was ordered into long-term foster care after being assessed as unadoptable. As to the two younger girls, the court determined that termination of parental rights would not be detrimental and ordered adoption as their permanent placement goal. The court continued the Welfare and Institutions Code section 366.26 hearing so that an adoptive home could be identified.

Soon thereafter, the paternal uncle and his girlfriend decided to adopt both girls. Although the youngest child did not understand the concept of adoption, her

sister wished to be adopted. However, counsel soon learned that the eldest child was upset by the prospect of being separated from her siblings. Therefore, at the scheduled 366.26 hearing, counsel asked the court to order a bonding study to determine whether the children were so bonded that termination of parental rights to the two youngest would jeopardize the children's well-being under section 366.26(c)(1)(E), especially that of the eldest. Counsel acknowledged that, even if the court did not terminate parental rights as to the two youngest, all three children would still not live together.

The juvenile court interpreted section 366.26(c)(1)(E) as focusing on the impact of terminating parental rights on the two children being adopted, rather than the impact on the eldest child. The court therefore refused to continue the matter and terminated parental rights to the two youngest girls. The children's counsel appealed, contending that the juvenile court did not have all of the necessary information to make a fully informed decision and, therefore, should have continued the section 366.26 hearing. Counsel also argued that the termination order should be reversed because the juvenile court denied her request to be relieved of her duty to represent the two youngest girls.

The Court of Appeal held that neither the juvenile court nor the Department of Human Services (department) had a duty to address the applicability of section 366.26(c)(1)(E), and thus the continuance was properly denied. Section 366.26(c)(1) provides that the court must terminate parental rights and place the child for adoption if it determines that it is likely that the child will be adopted. However, one of the circumstances deemed a compelling reason for determining that termination would be detrimental to a child is evidence that there would be substantial inference with a child's sibling relationship as compared to the benefit of legal permanence through adoption. (Section 366.26 (c)(1)(E).) The appellate court first noted that such language provided a statutory presumption that termination is in a dependent child's best interest and therefore not detrimental if there is clear and convincing proof of adoptability, as was found by the juvenile court in this case. (Section 366.26(b); see also *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1343–1344.) The court then concluded that such language did not impose a duty on the court to make a finding of an absence of detriment as a prerequisite for terminating parental rights.

The appellate court also determined that the children had the burden of demonstrating that termination of parental rights would substantially interfere with the sibling relationship. Although the court recognized that the children's counsel did so by requesting the bonding study, it emphasized that counsel relied exclusively on the eldest child's concerns. Section 366.26(c)(1) and its exceptions pertain to a child for whom the court is conducting a hearing to select and implement a permanent plan. Since the purpose of the hearing in the instant case was to select and implement a permanent plan for only the two youngest children, counsel would have had to show a compelling reason to support a finding that the adoption would be detrimental to them. The appellate court found that there was enough evidence to support the juvenile court's denial of counsel's request for a continuance since she admitted that she had no reason to believe the adoption would be detrimental to the two youngest girls, and she did not know if the kind of sibling bond the eldest felt was reciprocated by her half sisters. The court further noted that counsel had not requested a continuance in order to communicate with the two youngest children.

Regarding the conflict of interest alleged by counsel, the appellate court found that any possible error was harmless, and thus the court did not address whether there was a sufficient showing to have required the juvenile court to relieve counsel from representing all three girls. The court explained that since the girls' counsel argued in favor of continued sibling relationships, a conflict would arise only if the two youngest favored termination. However, since the juvenile court had entered an order terminating parental rights, the two youngest were not prejudiced. If, on the other hand, the two youngest girls shared their half-sister's position, then no conflict even existed. Therefore, the appellate court held that both the continuance and the request to be discharged as counsel for the two youngest children were properly denied by the juvenile court. The juvenile court's order terminating parental rights was also affirmed.

County of Los Angeles v. Superior Court of Los Angeles and Terrell R. **(Sept. 30, 2002) 102 Cal.App.4th 627 [125 Cal.Rptr.2d 637]. Court of Appeal, Second District, Division 5.**

The juvenile court denied the county's motion for summary judgment when a child alleged that the county had breached mandatory duties and caused him injury by placing him in a foster home where he was sexually abused.

The child and his four siblings were adjudged dependents and removed from the custody of their mother. They were placed in the custody of their maternal grandmother and her husband until the county Department of Family Services removed the children because she failed to provide for them and abused prescription drugs. Thereafter the child was separated from his siblings and placed in a foster home with a family friend who had recently become a certified foster parent by attending the required training through a state-licensed foster family agency. However, prior to certification, the foster parent had received only 15 of the 30 hours required to complete the training, of which fact the county social worker was aware.

The child lived with the foster parent for approximately three months. During that time, the county social worker visited once a month and the social worker from the

foster family agency visited twice a month to assess the child's living environment. The child had his own room and appeared to be content. However, it was later discovered that the foster parent had been sleeping in the same bed as the child and sexually molesting him. The child was immediately removed from the home.

The child thereafter brought a lawsuit against the county, among other parties, alleging that pursuant to Government Code section 815.6, the county was directly liable for violating the mandatory statutory duties outlined in Family Code section 7950(a)(1); Welfare and Institutions Code sections 16501(c), 16501.1(c), 16000, and 16002(b); and State Department of Social Services Manual of Policies and Procedures (DSS Manual) regulations 31-301.21, 31-405.1(j), 31-420.1, and 31-420.2. He further alleged that the county was vicariously liable under the doctrine of respondeat superior for the negligence of its social worker in its placement of the child and supervision thereafter. The county moved for summary judgment on the ground that it was immune from suit unless it had breached a mandatory statutory duty, and claimed that it had not. The county also moved for summary judgment on the ground that any negligence of its employees had been the result of their exercise of discretion, and as such the county was exempt from liability. The juvenile court held that a triable issue of fact existed regarding whether the county social worker had known that 30 hours of training was required prior to foster parent certification and that the foster parent had completed only 15 hours. The court reasoned that if the county social worker had known that the foster parent's certification was a sham, the county could be held liable for the social worker's breach of his ministerial duty to place the child in a certified foster home.

The Court of Appeal concluded that no triable issue of fact existed regarding any breach of mandatory duties by the county. The appellate court further concluded that the social worker and the county were immune from liability for the discretionary acts of the social worker in placing and supervising the child.

Pursuant to Government Code section 815.6, a public entity may be held directly liable for failing to fulfill a mandatory duty imposed by an enactment such as a statute or regulation. The following three factors must be present for liability to be imposed: (1) the enactment must impose a mandatory, not discretionary, duty; (2) the enactment must intend to protect against the kind of injury suffered by the party asserting section 815.6 as a basis of liability; and (3) the injury suffered must be proximately caused by the breach of such a duty. Whether an enactment is intended to impose a mandatory duty is a question of law for the court.

The child first contended that the county had a mandatory duty to place a foster child with a relative and siblings pursuant to the following statutes: Family Code section 7950(a)(1); Welfare and Institutions Code sections 16501.1(c), 16000, and 16002(b); and DSS Manual regulation 31-420.2. Although the appellate court dealt with each statute separately, the result was the same: each conferred on social services agencies the discretion to choose an appropriate placement for the child under the circumstances. Placing the child with relatives and/or siblings was merely a "priority" for the social worker assigned to the case to consider in determining which foster care placement was appropriate. No mandatory duty was created by any of the aforementioned statutes under which the county could be held liable. The appellate court also noted that the purpose behind most of the statutes was to preserve the family relationship, not to prevent sexual abuse. Further, the evidence was undisputed that, at the time of the child's foster placement, no placement was available that would house all five siblings, and none of the child's relatives was available for placement. Therefore, the appellate court concluded that since there was no mandatory duty to place the child with a relative and/or siblings, and there was evidence that neither the child's relatives nor his siblings were available for placement, the county was not directly liable for placing the child in a foster home where he was sexually abused.

The child next contended that the county had a mandatory duty to place a foster child in an appropriate environment and monitor the child's condition under DSS Manual regulations 31-405.1(j) and 31-420.1. The appellate court concluded that placement and supervision are functions involving the exercise of discretion. The regulations set forth general policy goals for the social worker rather than create a mandatory duty. The appellate court emphasized that a county is not the insurer of a child's physical and emotional condition, growth, and development while in foster care placement.

Last, the child alleged that Welfare and Institutions Code section 16501(c) and DSS Manual regulation 31-301.21 were sources of mandatory duties, but the appellate court was unable to discern any, since both involved limitations on contracting for service-funded activities, needs assessment, and case management services.

The appellate court also addressed whether the county could be held derivatively liable for the social worker's placement and supervision of the child. In addition to direct liability, a public entity may be held derivatively liable for the tortious acts or omissions of its employees unless the employee himself or herself would be immune. (Gov. Code, § 815.2.) Pursuant to Government Code section 820.2, a public employee is immune from liability "where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused." Accordingly, the appellate court concluded that the appropriate degree of supervision of a foster parent is a uniquely discretionary activity for which the county social worker and the county are immune from liability. It noted that the social worker had placed the child with a licensed foster family agency and complied with the visitation schedule mandated by regulations. During such visits, the child appeared to be content and never disclosed any episodes of sexual abuse. Therefore, since the social worker was immune from liability regarding the inherently discretionary nature of placing and supervising the child, the county could not be held derivatively liable for the acts of the social worker.

The last issue addressed by the appellate court was whether the county social worker had complied with her ministerial duty to place the child with a licensed foster family agency for placement in a certified foster family home, since the social worker had known that the foster parent had not completed the requisite amount of training. (Welf. & Inst. Code, § 361.21 (e)(6); DSS Manual Reg., § 31-420.22.) The appellate court held that the social worker had complied with her duty. It noted that she had placed the child with a licensed foster family agency and that the agency had certified the foster parent's residence as meeting the requirements of a proper foster family home. There was no evidence of improper purpose or motivation. The appellate court did not feel that mere knowledge that the agency relaxed training requirements for the foster parent could support the juvenile court's inference that she had known that the certification was a "sham." Therefore, the court determined that the social worker had fulfilled her duty under the circumstances.

The Court of Appeal granted the county's petition for writ of mandate and ordered the juvenile court to vacate its decision denying the county's motion for summary judgment and to enter judgment in favor of the county.

In re S.D. **(Sept. 27, 2002) 102 Cal.App. 4th 560 [125 Cal.Rptr.2d 570]. Court of Appeal, Fifth District.**

The juvenile court terminated the parental rights of a father pursuant to Welfare and Institutions Code section 366.26.

This appeal centered around the enactment of section 326.5, effective July 1, 2001, in which the Legislature mandated the appointment of a guardian ad litem to represent the child's interest who is not the social worker or probation officer who filed the dependency petition. This section repealed former section 326, which named the probation officer or social worker who filed a dependency petition under section 300 as the guardian ad litem unless the court appointed another adult.

This case was pending on July 1, 2001, the effective date of the legislative changes. The petition leading to termination of parental rights was filed on September 20, 1999. At that time, the social worker filing the petition was, by application of law, appointed guardian ad litem for both children. Both children were removed from the home and the petition was sustained. The court appointed independent counsel to represent the children on March 5, 2001. After an unsuccessful reunification effort, an adoptions assessment report was filed on July 16, 2001, and the case was set for a permanent plan hearing pursuant to section 366.26. The permanency plan hearing occurred on March 14, 2002, and the father's parental rights as to his two minor children were terminated on April 2, 2002. However, a new guardian ad litem was never appointed, and the order appointing independent counsel did not include a charge that counsel act as guardian ad litem. On appeal, the father contended that the court's failure to appoint an independent guardian pursuant to the mandates of section 326.5 rendered the termination order and all orders of the court after July 1, 2001, null and void.

The Court of Appeal held that while the legislation clearly mandated the juvenile court to appoint an independent guardian effective July 1, 2001, there clearly was no requirement that any juvenile court order in a case pending on July 1, 2001, be declared null and void unless a new guardian ad litem were appointed. Rather, the appellate court contended, the impact on pending cases revolved around whether the Legislature had intended the statutory changes to be prospective or retroactive in application. The appellate court examined Senate Bill 2160 (1999–2000 Reg. Sess.), which was responsible for these changes, and determined that the history of the bill revealed two main purposes: (1) to give abused and neglected children in dependency courts a voice by creating a presumption that the child would benefit from the appointment of independent counsel who was focused solely on the best interest of the child, and (2) to bring California dependency law into compliance with federal standards in order to make federal grant funding available to the state. Federal standards require that the guardian ad litem be either an attorney or a Court Appointed Special Advocate; they do not allow the social worker to fill this role. The court noted that statutes are ordinarily presumed to operate prospectively; a retroactive application is appropriate only where there is a clear legislative intent to do so. (*Evangelators v. Superior Court* (1988) 44 Cal.3d 1188, 1207–1208.) The court concluded that there was nothing in the legislative history to support a finding that the Legislature had intended to apply the statutory changes retroactively. The court further stated that in light of the severe consequences of applying the changes retroactively, they refused to do so without a clear legislative mandate.

***Judith P. v. Superior Court of Los Angeles County* (Sept. 26, 2002) 102 Cal.App.4th 535 [126 Cal.Rptr.2d 14]. Court of Appeal, Second District, Division 3.**

The juvenile court terminated a mother's reunification services, denied her request for a contested Welfare and Institutions Code section 366.21(f) hearing and a hearing continuance, and set the contested matter for a section 366.26 hearing.

After declaring the children dependents, the juvenile court had ordered reunification services and monitored visitation for the mother. The mother was ordered to attend counseling and a parenting class, and to take any prescribed psychotropic medication. The status report submitted by the Department of Children and Family Services (DCFS) at the six-month section 366.21 hearing stated that the mother had not complied with the case plan and had failed to regularly visit her children. DCFS recommended that the children continue their placement in foster care. A 12-month status review hearing was set and the court ordered DCFS to submit a section 366.21(f) status report on or before the hearing. DCFS did not file the report with the court until the day of the hearing. The status report indicated that DCFS did not know whether the mother was in compliance with the case plan and recommended that reunification services be terminated.

The juvenile court received the report into evidence and concluded that adequate notice of its contents had been given to the mother. Mother's counsel then stated that her client had completed the requirements of her case plan but had been unable to inform the social worker because she did not currently know how to contact him (the social worker had changed six times in two years). The mother had documentation of her completion but did not bring it with her. Mother's counsel then asked that the court either continue the section 366.21(f) hearing or wait until the section 366.26 hearing to terminate reunification services so that the social worker could have time to interview the mother. Counsel also added that the mother would have liked to visit the children more frequently but had financial constraints concerning transportation.

The juvenile court concluded that the mother's compliance with the case plan was incomplete, terminated reunification services, and ordered DCFS to provide permanent placement. Mother's counsel then requested a contested section 366.21(f) hearing. The court denied the request but decided that the section 366.26 hearing would be set as a contested matter. On appeal, the mother contended that the juvenile court had erred by failing to allow her to set a contested hearing in accordance with section 366.21(f).

The Court of Appeal held that DCFS's failure to provide timely service of their status report as mandated by section 366.21(c) constituted a denial of due process and compelled a reversal of the juvenile court's order. Section 366.21(c) provides that, "[a]t least 10 calendar days" prior to the hearing, the social worker must file a status report with the court and provide copies of it to both the parents and counsel of any dependent children. This report must include, among other things, the social worker's recommendation for disposition and, if the social worker does not recommend returning the child to a parent, the specific reasons why the return of the child would be detrimental to the child. The appellate court stated that this 10-day time period provides parties the time to review the contents of the report and recommendations and, more importantly, the time to assemble their own evidence that contradicts or explains the findings in the report. Thus, substantive and procedural requirements must be satisfied before proposing termination of reunification in order to protect the interests of parents and diminish the risk of erroneous findings of parental inadequacy. (See *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 256.)

The appellate court also found that the minimum 10-day requirement was mandatory, meaning that the failure to comply has the effect of "invalidating the governmental action to which the procedural requirement relates." (*Edwards v. Steele* (1979) 25 Cal.3d 406, 409–410.) In ascertaining whether the Legislature intended to make the time requirement permissive or mandatory, the court applied two tests. The "promotes test" focuses on whether the likely consequences of holding a time limitation mandatory would defeat or promote the purpose of the enactment. The "penalties test" finds the time limitation mandatory only if the penalty for failure to do the act within the time commanded is provided in the enactment. The appellate court concluded that, under the "promotes test," the consequences of holding the 10-day notice requirement mandatory promoted the preservation and strengthening of the child's family ties and the reunification of the family (Welf. & Inst. Code, § 202(a)), which is of paramount importance at all pre-permanency planning stages of the proceedings. The court also found that the "penalties test" weighed in favor of finding the 10-day minimum requirement mandatory because, although section 366.21 does not expressly provide for a consequence in failing to meet its requirements, the due process provisions of both the state and federal constitutions have the effect of invalidating actions taken in violation of reasonable notice requirements. Accordingly, the court found that the DCFS had a mandatory duty to give parents and children the status report at least 10 days before a pre-permanency plan review hearing.

Last, the appellate court concluded that the failure to provide parents and children with the status report at least 10 days before a status review hearing is per se reversible error in the absence of either a continued hearing or an express waiver. Although the appellate court considered arguments by DCFS that notice should be reviewed using a harmless error standard, it agreed with the child's counsel that the failure to provide this kind of notice is a structural error rather than a trial one. A structural error involves basic protections, without which no punishment may be regarded as fundamentally fair. (*Arizona v. Fulminante* (1991) 499 U.S. 279, 310.) The appellate court reasoned that it is fundamentally unfair to terminate the parent-child relationship if the parent and/or child has not had an adequate opportunity to prepare and present the best possible case for continuation of reunification services and/or reunification. Although *Arizona v. Fulminante* was a criminal case, the court concluded that dependency cases are analo-

gous in that both involve the deprivation of a fundamental constitutional right via adjudicatory processes—the parent's relationship with his or her child may be permanently terminated (loss of the right to parent) while the defendant may be convicted (loss of liberty). Based on this comparison, the appellate court found that the failure to give the minimum 10 days' notice was a structural error and that the per se reversible error standard applied. As such, the order terminating reunification services, denying the mother's request for a continuance, and setting the contest for the section 366.26 hearing was reversed.

In re Megan P. **(Sept. 25, 2002) 102 Cal.App.4th 480 [125 Cal.Rptr.2d 425]. Court of Appeal, Second District, Division 1.**

The juvenile court denied a father's request for a continuance, found that the father had received sufficient notice of the Welfare and Institutions Code section 366.26 hearing, noted that he was only an alleged father, and terminated his parental rights.

Following the mother's arrest in late 1996, the Los Angeles County Department of Children and Family Services (DCFS) filed a petition alleging that she was unable to care for her children. The petition further stated that the whereabouts of the girls' father (whose name was misspelled) were unknown and that he was not providing them with regular care. As a result, the four girls were placed in foster homes. The father, however, had been trying to contact the children's mother but was unable to find her. He had moved from California to Indiana following his breakup with the mother. That same year, when the Los Angeles Child Support Services Department located him at his Indiana address and demanded that he pay child support, he readily admitted that he was the girls' father and began making child support payments.

DCFS, however, was not as successful in its attempts to search for the father. Despite a report from the mother's aunt that he was living in Indiana, DCFS searched for the father only in California, at the address where he had previously lived with the family. DCFS was also using a misspelled last name in its search even though the correct spelling was listed in the birth certificates of the two youngest daughters. In 1998, when the dependency court realized the spelling error, DCFS continued to search for the father only in California.

Although Child Support Services is a sister agency to DCFS, DCFS did not contact the department until March 2001 to inquire about the father's location. Child Support Services provided the father's Indiana address, and DCFS wrote to the father and requested that he call to discuss his plans for his children. The father called immediately, explaining that he had tried unsuccessfully to find his children and had believed that they were living with their mother. However, by this point, the oldest daughter had been placed in a group home and the other three were living with prospective adoptive families. His parental rights had already been terminated with regard to his two youngest daughters, and a hearing was set for January 2002 to terminate his rights as to his third daughter. A lawyer was appointed to represent the father in December 2001.

At the January 2002 hearing, the father's lawyer asked for a continuance, explaining that he had not had an opportunity to consult with his client. The request was denied and the father's rights were terminated. The juvenile court relied in part on the fact that he was not listed as the father on the birth certificates of his two oldest daughters (which was discovered sometime after 1999). However, he had always believed that he was the father of all of the girls and was engaged in a relationship with the mother when the two oldest girls were born. He appealed and also filed a petition for a writ of habeas corpus, claiming he had had no notice of the proceedings. DCFS contended that its search was legally sufficient and recommended termination of the father's parental rights so that his third daughter could be adopted.

The Court of Appeal reversed the order terminating the father's parental rights and remanded the case with directions to (1) vacate the disposition orders as to his third child and conduct the proceedings anew after providing the father with proper notice and an opportunity to be heard; (2) determine the father's status via his oldest daughter and, if it was in her best interest, authorize visitation; and (3) order DCFS to provide all appropriate reunification services to the father. The petition for habeus corpus was granted to the extent necessary to vest jurisdiction in the dependency court to make the appropriate orders with regard to his two oldest daughters. The court stated that DCFS had a constitutional obligation to exercise due diligence to notify parents before terminating their parental rights. The term "reasonable diligence" denotes a thorough, systematic investigation and an inquiry conducted in good faith. (*In re Arlyne A.* (2000) 85 Cal.App.4th 591, 598–600.) The court concluded that the department had not exercised reasonable diligence by continuing to look for the father in California even though it had evidence of the correct spelling of his last name and his location in Indiana. Moreover, the court questioned why DCFS did not ask the Child Support Services Department whether it knew of the father's whereabouts. The appellate court noted that the father was entitled to be heard to try to demonstrate to the court that it was in his daughter's best interest to get to know him. The appellate court also indicated that dependent families are entitled to assurance that DCFS will take steps to contact and continue to contact the Child Support Services Department whenever a parent is missing.

In re Josiah S. **(Sept. 25, 2002) 102 Cal. App.4th 403 [125 Cal.Rptr.2d 413]. Court of Appeal, Second District, Division 4.**

The juvenile court denied a mother's request to contest continued long-term placement of her son pursuant to Welfare and Institutions Code section 366.3 at the six-month status review hearing. The mother had also raised the issue of visitation with her son, but the court again denied her a contested hearing. The juvenile court also summarily denied the mother's section 388 petition.

The minor was born in 1997 with severe cardiological and pulmonary problems. In 1998, the juvenile court sustained a section 300 petition pursuant to allegations by the Department of Children and Family Services (DCFS) that the mother had failed to obtain critical medical

treatment for her son, had failed to cooperate with home nurse visits, and had demonstrated many emotional problems that limited her ability to care for the minor. The minor was removed from his mother's custody and reunification services were ordered. In 1999, reunification services were terminated and the minor was ordered into a permanent plan of long-term foster care. The Court of Appeal affirmed both decisions. In 2001, DCFS filed a status review report for a six-month review hearing and a motion to limit the mother's parental involvement in her son's education. The matter was set for contested hearing, but it did not occur.

At the review hearing on May 25, 2001, the mother informed the court that she had not received the report prepared by DCFS and requested an evidentiary hearing regarding its findings. Her request was denied. On May 30, the mother filed a section 388 petition seeking modification of the juvenile court's jurisdiction and disposition orders and requesting the return of her son to her custody. She also asked the court to make an order allowing her to have her own medical expert examine her son and to review all medical records from foster care. She argued that the report established that her son was continuing to have problems similar to when he was in her custody and that this was new evidence supporting her position that it was not her care, or lack thereof, that threatened her son. She asserted that other medical experts had assessed her son's failure to thrive as organic in nature. On May 31, 2002, without giving any factual reason for its decision, the court summarily denied the mother's section 388 petition.

DCFS filed an interim review report for the hearing scheduled to take place on June 28, 2001. Based on factual information contained in the report regarding a visitation between the mother and son, DCFS recommended that the mother be allowed no more than a one-hour monitored visitation per month. The mother filed a written objection to the report and recommendation and challenged the factual allegations. The mother's counsel also requested a contested hearing on the contents of the report. The court denied the request, stating that it intended to receive the mother's documents into evidence. When the juvenile court stated that it would continue the existing visitation order of one visit per month, the mother alleged that the DCFS had canceled her visits and had not complied with the visitation order. The court refused to change the order. The mother appealed the juvenile court's refusal to grant a contested hearing. The mother also appealed the denial of her section 388 petition, claiming that it denied her due process. The appellate court consolidated the cases on appeal.

The Court of Appeal concluded that the juvenile court had erred in denying the mother's request for a contested hearing regarding findings in the status report. The appellate court further concluded that she also had a right to a contested hearing on the issue of visitation. Section 366.3(e) provides that a parent whose parental rights have not been terminated has the right to contest the issue of continued care and to demonstrate that further efforts at reunification are in the best interest of the child. In such a case, the court may order additional reunification services for the parent. (Welf. & Inst. Code, § 366.3(e).) The appellate court emphasized that the rights of parents to attempt to reestablish the parental relationship with a child is a critical aspect of our dependency system. Therefore, the appellate court held that the juvenile court had erred by denying the mother's request for a contested hearing because she had made it clear that she wished to challenge the prior juvenile court findings and to contest portions of the DCLS report.

The appellate court also concluded that, because the mother's section 388 petition addressed issues similar to those raised at the May 25 hearing, the order summarily denying that petition should be set aside. Section 388(a) allows a parent of a dependent child to petition the court for a hearing to change, modify, or terminate an order of the court upon grounds of changed circumstances or new evidence. Section 388(c) allows the court to order a hearing if it feels that the proposed change of order or termination of jurisdiction is in the best interest of the child. The parent need only make a prima facie showing of facts that, if credited, will sustain a favorable decision. The court found that the mother's petition relied on statements of the nurse indicating that her son continued to have regular bouts of vomiting and trouble gaining weight even though he was receiving regular medical care. The mother also had submitted a doctor's report, previously rejected by the juvenile court, that concluded that the minor's failure to thrive was the result of organic causes, not the mother's abuse or neglect. Therefore, since the mother had provided evidence demonstrating that her son continued to have medical problems despite removal from her custody and her request for a contested hearing was denied, the court determined that the summary denial of the section 388 petition should be set aside as well. The case was remanded to the juvenile court to conduct the contested review hearing on continued long-term foster care, visitation, and the issues raised in the section 388 petition.

***Teresa J. v. Superior Court of Sacramento County* (Sept. 24, 2002) 102 Cal.App.4th 366 [125 Cal.Rptr.2d 506]. Court of Appeal, Third District.**

The juvenile court had held that a dependent child could be relinquished only to a public adoption agency and declared that the relinquishment of the minor by his birth mother to a private adoption agency was invalid.

The minor had been adjudged a dependent child under Welfare and Institutions Code section 300. Thereafter, his mother executed a statement of understanding and relinquished him to a private adoption agency for adoption. The statement of understanding named a couple who had previously cared for the child as

his foster parents. The California Department of Social Services (DSS) signed an acknowledgement and receipt of the relinquishment. Soon thereafter, DSS declared the acknowledgment of relinquishment void because it did not comply with section 361(b), which DSS interpreted to mean that a parent could relinquish a dependent child only to DSS or a licensed county adoption agency, not a private adoption agency. The juvenile court agreed with DSS's interpretation and ruled that the relinquishment was invalid. On appeal, the birth mother and prospective adoptive parents contended that the birth mother had the right to relinquish the child to a private adoptive agency under Family Code section 8700(a), which provides in part: "Either birth parent may relinquish a child to the department or a licensed adoption agency for adoption by a written statement signed before two subscribing witnesses and acknowledged before an authorized official of the department or agency." Under Family Code section 8350, a "licensed adoption agency" means both a licensed county adoption agency and a licensed private adoption agency. Because no distinction is made between a public and a private adoption agency, they contended that the birth mother could relinquish her child to either.

The Court of Appeal held that a birth parent could relinquish a dependent child to a private adoption agency, subject to the juvenile court's power to limit the parent's control over the child. Section 361(b) provides: "Nothing in subdivision (a) shall be construed to limit the ability of a parent to voluntarily relinquish his or her child to the State Department of Social Services or to a licensed county adoption agency at any time while the child is a dependent child of the juvenile court if the department or agency is willing to accept the relinquishment." After reading section 361 as a whole, the court determined that subdivision (b) did not address the parent's ability to relinquish a dependent child to a private adoption agency. Subdivision (a) stated that when a child has been adjudged a dependent, "the court may limit the control to be exercised by any parent or guardian." The appellate court determined that section 361(b) does not limit the parent's ability to relinquish a dependent child for adoption but rather limits the juvenile court's ability to interfere with that decision when the relinquishment is to a public adoption agency. Moreover, the court found that the use of the term "licensed adoption agency" in Family Code section 8700 as well as the use of the term "adoption agency" in Welfare and Institutions Code sections 358.1 and 366.23 (e)(1) also supported a finding that the dependent child could be relinquished to either a public or a private adoption agency.

However, the appellate court also noted that section 361(a) confers on the juvenile court broad power to limit the parent's control, which includes the parent's ability to relinquish the child to a private adoption agency since no exception exists in the subdivision. The appellate court explained that the juvenile court should have declared the relinquishment invalid as a result of the exercise of its power under section 361(a) and a finding that the relinquishment was not in the minor's best interest, rather than declaring the relinquishment itself invalid. The juvenile court's decision was therefore reversed and the matter remanded to determine whether the birth mother's control over the minor should be limited to preclude a relinquishment to the private adoption agency under the provisions of section 361(a).

***Steven J. Carroll v. San Diego* (Sept. 13, 2002) 101 Cal.App.4th 1423 [124 Cal.Rptr.2d 891]. Court of Appeal, Fourth District, Division 1.**

The juvenile court denied an attorney's motion to be relieved as counsel for all of her minor clients on the ground that a conflict of interest existed in violation of Welfare and Institutions Code section 366.26(c)(1)(E).

The juvenile court had sustained section 300 petitions alleging that seven siblings were within the court's jurisdiction, and entered dispositional orders to place them in foster care. The attorney was appointed as counsel for all of the children and appeared on behalf of them throughout the dependency proceedings. The Health and Human Services Agency (HHS) made the following recommendations: termination of parental rights and adoption placement for three of the youngest children (then ages 3, 5, and 6); continued foster-care placement for the three oldest children (then ages 8, 11, and 12) because they were not adoptable owing to their ages; adoption assessment for the youngest child (then age 3), despite the fact that she had been living in the foster home with her three oldest siblings and was closely bonded to them.

The children's attorney filed a declaration of a conflict of interest and sought to be relieved. Section 366.26(c)(1) provides that when reunification services have been terminated and the court finds the child is likely to be adopted, the court must select adoption as the permanent plan unless it finds that termination of parental rights would be detrimental under one of the exceptions listed in subsections (A) through (E). A new exception provided by subsection (c)(1)(E) is whether "[t]here would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption." The attorney contended that an actual, disabling conflict of interest existed because the eldest child wished to maintain a sibling relationship with the three younger children but their adoption would sever the sibling relationship. Two of the children who were supposed to be available for adoption had also expressed an interest in preserving their sibling relationship.

Upon the trial court's denial of the motion, the attorney filed a petition for writ of mandamus requesting an order directing the trial court to relieve her as counsel for the children and to appoint separate counsel for each of the children. HHS agreed that a conflict of interest required the court to relieve the attorney but questioned whether different counsel was required for each child.

The Court of Appeal held that an actual conflict of interest existed between some

of the siblings and that the attorney must be relieved as counsel for all of the children. The appellate court stated that when an actual conflict of interest arises, as it did in this case, the attorney must be relieved from representation of all of the minors. The appellate court then turned to the issue of whether different counsel had to be appointed for each child or whether the court had discretion to separate the minors into subsets according to their congruent interests and appoint counsel to each subset. In resolving the issue, the court examined the tension between DSS Manual rule 3-310, which prohibits an attorney from accepting new representation of multiple clients when a potential conflict of interest exists among the clients, and Welfare and Institutions Code section 317(c), which prohibits representation of a minor in a dependency proceeding by another person or agency whose interests conflict with the minor's. The court concluded that the two concepts could be reconciled by a rule that, in a dependency proceeding, an attorney may not represent multiple minors if there is either an actual conflict of interest between them or a reasonable likelihood that an actual conflict of interest would arise. Because it was impossible for the appellate court to determine the reasonable likelihood of actual conflicts of interest among the seven siblings, the court remanded the matter to the juvenile court to apply the foregoing standard and determine whether each minor should have separate counsel appointed or whether groups of the siblings could adequately be represented by the same counsel.

In re L.Y.L. **(Sept. 4, 2002) 101 Cal.App. 4th 942 [124 Cal. Rptr.2d 688]. Court of Appeal, Fourth District, Division 1.**

The juvenile court terminated a mother's parental rights to her daughter under Welfare and Institutions Code section 366.26. The San Diego County Health and Human Services Agency (the agency) had removed the child and her brother from the mother's custody and filed Welfare and Institutions section 300 petitions on their behalf, alleging that the mother physically harmed and excessively disciplined the children. The court made a true finding on the petition and ordered reunification services. The court granted the mother a 60-day trial visit. Later, the agency filed a section 387 supplemental petition asserting that the mother was no longer able to care for the child because the child's stepfather repeatedly beat her with a belt. The court made a true finding on the petition and ordered reunification services. At the 18-month review hearing, the court terminated reunification services and scheduled a section 366.26 hearing. At the 366.26 hearing, the court found by clear and convincing evidence that the child was likely to be adopted and terminated the mother's parental rights, finding that termination would not be detrimental to the child because none of the section 366.26(c)(1) exceptions applied. The mother appealed the juvenile court's decision, arguing that she established two exceptions to terminating parental rights under section 366.26(c)(1)(E) (the sibling relationship exception) and 366.26(c)(1)(A) (the beneficial relationship exception). The mother also argued that she received ineffective assistance of counsel because her counsel did not object to the adoption assessment report on which the court based its findings. She asserted that the report did not contain required information about the prospective adoptive parents.

The Court of Appeal affirmed the juvenile court's decision terminating the mother's parental rights. First, the appellate court addressed the mother's argument that section 366.26(c)(1)(E) provided an exception to the termination of her parental rights. The court argued, contrary to the agency's position, that a parent has standing to assert the section 366.26(c)(1)(E) sibling relationship exception because the determination of this exception directly affects the parent's interests in relationship to the minor. Then, the court inferred that the Legislature intended the courts, under the section 366.26(c)(1)(E) exception, to balance the benefit of the child's relation-ship with his or her siblings against the benefit to the child of gaining a permanent home through adoption. Furthermore, the appellate court indicated that the test under the section 366.26(c)(1)(E) exception is to determine whether terminating parental rights would substantially interfere with the sibling relationship, (1) by evaluating the nature and extent of the relationship and (2) by weighing the child's best interest in continuing that sibling relationship against the benefit the child would receive from the permanency of adoption. The appellate court indicated that, other than the child being sad, there was no evidence that she would suffer detriment if her relationship with her sibling ended due to her adoption. In addition, the court asserted that the evidence indicated that the benefits of adoption outweigh the benefits of the continuing sibling relationship because by adoption the child would gain the benefits of belonging to a family and having a permanent home.

Next, the appellate court considered the validity of the mother's argument that the section 366.26(c)(1)(A) exception prevents termination of her parental rights. The appellate court stated that the section 366.26(c)(1)(A) exception applies if termination of parental rights would be detrimental to the child because the child would benefit from the continuing relationship. The appellate court indicated that, for this exception to apply, the parent must show he or she occupies a parental role in the child's life, resulting in a significant, positive, emotional attachment of the child to the parent. Reasoning that the mother did not take care of the child, treat her well, feed her well, tell her she loved her, help her with her homework, or keep her healthy, the court asserted that the child's relationship with her mother was not beneficial. Thus, the appellate court concluded that the section 366.26(c)(1)(A) exception did not apply.

Furthermore, the appellate court concluded that the mother did not demonstrate prejudice as a result of her counsel's not challenging the adequacy of the adoption assessment report. The court reasoned that the evidence showed that the child was adoptable because she was a normal, sociable female in good health. Furthermore, the court noted that the child's prospective adoptive parents were her licensed foster parents, and they had been previously screened for the factors required in the assessment report. Thus, the appellate court affirmed the juvenile court's decision terminating the mother's parental rights.

***In re Karen C.* (Sept. 3, 2002) 101 Cal. App.4th 932 [124 Cal.Rptr.2d 677]. Court of Appeal, Second District, Division 2.**

The juvenile court denied a child's petition for an order determining the existence of a mother-and-child relationship between the child and a woman who was not her biological mother. The child had been born to a married couple that did not want to keep her. To care for the child, the natural parents had given the child to an unrelated woman. The child had no further contact with her natural parents. The woman was an alcoholic who suffered from clinical depression, and she often beat the child. The Department of Children and Family Services (DCFS) became aware of the abuse, and thereafter the child was declared a dependent of the juvenile court. The juvenile court placed the child in foster care and ordered that reunification services be provided for the woman. The juvenile court also ordered the woman to participate in parenting classes, individual counseling, alcoholism treatment, and alcohol abuse counseling and to take her prescribed medication. The woman failed to do these things. Accordingly, when the woman applied for a license to serve as a foster parent, the agency denied her application. The child then requested that the juvenile court decree the existence of a mother-daughter relationship between the child and the woman; the woman joined in the motion. The juvenile court denied the child's request, reasoning that the law does not allow a woman who is not a child's birth or genetic mother to be the child's mother. The child appealed the juvenile court's decision, arguing that the Family Code sections concerning the father-and-child relationship may also be applied to a mother-and-child relationship, that she had standing to bring the action, that the woman was her "presumed" mother according to the law and public policy, and that she was denied equal protection of the law because the juvenile court would have applied the law differently if she had been raised by a man instead of a woman.

The Court of Appeal vacated the juvenile court's order and remanded the matter to the juvenile court for further consideration in light of the recent California Supreme Court decision on *In re Nicholas H.* (2002) 23 Cal.4th 56. The appellate court held that according to the ruling in *Nicholas H.*, the woman was entitled to the presumption of maternity to the genetically unrelated child because she had raised and held the child out as her own. The appellate court indicated that section 7610 of the Uniform Parentage Act provides that the existence of a parent-child relationship can be proved in three forms: between a child and the natural mother, between a child and the natural father, and between a child and an adoptive parent. Family Code section 7611(d) sets forth a rebuttable presumption of paternity where

a man is presumed to be the natural father of a child if "he receives the child into his home and openly holds out the child as his natural child." The appellate court then held that section 7611's rebuttable presumption applies equally to women and men. Furthermore, the court indicated that the mere fact that the woman admitted that she was not the birth mother of the child does not necessarily rebut the presumption of maternity flowing from the woman to the child.

The appellate court remanded the matter to the juvenile court for a fresh determination of whether a parent-child relationship existed under the principles set forth in *Nicholas H.*, basing its decision on the following four reasons: (1) a hearing will not unduly burden the juvenile court, (2) a hearing will enable all parties to present evidence for the first time of anything that has transpired after the juvenile court first denied the mother's request, (3) a hearing will assure that the dispute is squarely adjudicated under the principles enunciated in *Nicholas H.* and any other applicable rules of law, and (4) at such a hearing, if requested by any party, the juvenile court will also have an opportunity to adjudicate the absence of a mother-and-child relationship in the present case.

***Rosa S. v. Superior Court of Orange County* (Aug. 5, 2002) 100 Cal.App.4th 1181 [122 Cal.Rptr.2d 866]. Court of Appeal, Fourth District, Division 3.**

The juvenile court adjudicated the child a dependent of the court, refused to provide the child's mother with reunification services, and set a hearing to select a permanent plan for the child under Welfare and Institutions Code section 366.26. The child had first been declared a dependent by the juvenile court when she was 15 months old because her mother was arrested for possession of a controlled substance and child endangerment. While the mother was attending a one-year drug treatment and parental education program as part of her probation, the child was placed with her maternal grandfather and his wife. The mother moved into the child's grandparent's home after her release from jail. After 12 months of reunification services, the child was returned to her mother under a plan of family maintenance; 6 months later, the dependency was terminated.

The social services agency (the agency) then filed a petition alleging that the mother had an "unresolved" substance abuse problem, that her whereabouts were unknown at the time, and that she was not available to care for the medical and dental needs of the child. The mother's counsel "submitted" to jurisdiction on a stipulation form, which was received into evidence by the juvenile court. Pursuant to the stipulation form, the court found the allegations to be true and declared the child a ward of the court on the grounds of failure to protect and abandonment. The child's father, who was incarcerated, signed a waiver of his appearance and his default judgment was entered.

At the dispositional hearing, the agency's counsel initialed a stipulation form that proposed that the court adopt the written recommendations of the agency, including a handwritten order that the court find

the parents to have received the maximum family reunification services under section 361.5. The form also proposed that the agency "formulate a suitable permanent plan for the minor," and the court set a selection and implementation hearing under section 366.26. Neither the mother's counsel nor the child's counsel initialed the form. Instead, "request for argument" was written in the space for the child's attorney and "req[uest] cont[inuance] submit" was written in the space for the mother's attorney. The juvenile court denied the request for continuance and made findings pursuant to the agency's proposed stipulation. The court refused to provide the mother with reunification services and set a hearing to select a permanent plan for the child.

The mother appealed the juvenile court's decision, challenging the court's finding under section 300 that she had abandoned and failed to protect her child and arguing that the court denied her family reunification services that she was entitled to receive under section 361.5.

The Court of Appeal held that the juvenile court had dependency jurisdiction over the case but had erred by denying the mother reunification services. Therefore, the appellate court granted the respondent's petition in part and ordered the juvenile court to hold a new dispositional hearing. Regarding the mother's challenge to the juvenile court's findings under section 300(b) [failure to protect] and section 300(g) [abandonment], the appellate court dismissed the mother's arguments, stating that the preponderance of the evidence substantiated the abuse and neglect claims against the mother.

The appellate court addressed the mother's serious challenge to the juvenile court's denial of family reunification services under section 361.5. Welfare and Institutions section 361.5(a) provides that whenever a child is removed from a parent's custody, the juvenile court must order the social worker to provide child welfare services to the child and to the child's mother and statutorily presumed father for a period not to exceed 18 months after the date the child is originally removed from the parents' physical custody. The appellate court rejected the agency's argument that the mother should not receive a new period of reunification services because the second petition was close in time to the previous one and was based on the same conduct. The appellate court asserted that the agency's contention directly contradicts the statute; therefore, the juvenile court erred in denying the mother reunification services on this basis. The agency argued that the mother waived her right to challenge the denial of reunification services on appeal because her counsel submitted to the proposed finding that she had received the maximum amount of services to which she was entitled. The appellate court addressed the agency's argument by asserting that even if the right had been waived, the court had the discretion to hear the mother's challenge to the denial of reunification services because it is a question of law. The appellate court emphasized that when the mother submitted to the waiver, she was only acquiescing as to the state of the evidence and had preserved the right to challenge the evidence as insufficient to support a legal conclusion.

The court concluded that the mother was not precluded from receiving reunification services solely because she received 18 months of services in a previous dependency proceeding. According to the appellate court, section 361.5(a) clearly directs the juvenile court to order services "whenever" the child is removed from parental custody unless the case falls within the enumerated exceptions in the statute. The court acknowledged that the mother arguably falls within the section 361.5(b)(13) exception for having a history of "extensive, abusive, and chronic" drug use; however, the court indicated that the juvenile court did not make the required findings and the evidence of resumed drug use was not strong enough to make a "clear and convincing" finding as a matter of law. The appellate court concluded that none of the statutory exceptions authorized the denial of services based on a previous dependency where reunification was unsuccessful. The court stated, "Where jurisdiction has been terminated, however, the parent-child relationship is restored to its former status, free from governmental interference absent extraordinary circumstances, and a new dependency proceeding must include all the statutory provisions designed to protect that relationship." The appellate court issued a writ of mandate directing the juvenile court to vacate its dispositional orders precluding the mother from reunification services and hold a new dispositional hearing.

***In re Victoria C.* (July 24, 2002) 100 Cal.App.4th 536 [122 Cal.Rptr.2d 696]. Court of Appeal, Third District, Division 3.**

After an evidentiary hearing at the 12-month review hearing and a section 388 petition filed by the father, the juvenile court ordered that a child remain a dependent child in the home of the mother and that visitation with the father resume only when it was appropriate.

The child's parents, who had never married or lived together, admitted a petition alleging that their daughter was a dependent child because of serious physical and emotional harm and because the mother, as custodial parent, had failed to protect the child from that harm (See Welf. & Inst. Code, § 300(a)–(c)). The court ordered that custody would remain with the

mother, with the father having weekly monitored visitation, and that a psychological evaluation of the child be prepared. After the child became suicidal and appeared to be having hallucinations during a visit with her father, the father agreed to temporarily discontinue his visits. The social worker noted that the mother failed to bring the child's deteriorating mental condition to the attention of the agency. The court terminated the father's visitation rights and ordered an Evidence Code section 730 evaluation prepared, which found that if allowed to remain with the mother, the child would continue to have mental health problems. The evaluation recommended that she be placed in a highly structured group home. The agency prepared a supplemental petition under section 387. The petition was then dismissed upon the stipulation of all parties at the request of the agency. The order leaving custody with the mother, with visitation for the father terminated, remained in force.

The father filed a section 388 petition before the 12-month review hearing seeking an order removing the child from the mother's custody and reinstating his visitation with his daughter. The court dismissed the father's request for removal as an unsuitable request to be made under a section 388 petition. The court then heard evidence on the father's request for resumed visitation and on the need for continued services. After an evidentiary hearing the court retained jurisdiction, ordered custody to remain with the mother under the supervision of the agency, and ordered that visitation with the father begin only when it was appropriate. The father appealed on the grounds that the summary dismissal of his request to remove his daughter from the mother's home was proper under section 388 and that his stipulation to the dismissal of the section 387 supplemental petition did not preclude him from raising the issue on appeal.

The Court of Appeal concluded that the father had not waived any issues on appeal by not making an objection to the dismissal of the section 387 supplemental petition, and that the juvenile court had erred in not entertaining the father's request for an order removing the child from the custody of her mother. The appellate court found the error harmless and affirmed the judgment. Once a court has taken jurisdiction over a dependent child, any person with standing in the court and having an interest in the child may petition the court to change, modify, or set aside any order of the court or to terminate jurisdiction. Custody and placement orders may be challenged in this way and changed by the court upon a showing of changed circumstances or new evidence. Upon a showing, by clear and convincing evidence, that there are grounds for removal of a child from a parental home or from a current placement to a more restrictive placement, the court may make such an order if it is requested in a section 388 supplemental petition. The father had not waived his right to appeal the issue by failing to object to the dismissal of the section 387 petition because he had stipulated to the dismissal based on his belief that no suitable group home placement existed and felt, appropriately, that the situation might quickly improve. When it did not improve, he filed his 388 petition.

The appellate court found no reason to reverse the juvenile court's judgment and order a second hearing. The juvenile court had conducted a contested review hearing and had admitted into evidence the declaration the father submitted with his 388 petition, the agency's report, the Evidence Code section 730 report, and testimony of witnesses. After hearing counsel's arguments, the juvenile court had reaffirmed its previous custody order. The appellate court stated that the juvenile court's mistaken belief that it lacked jurisdiction to change the custody order under a 388 petition did not prevent the father from presenting all evidence on the custody issue that he felt was relevant. The father was unable to show on appeal what evidence had not been introduced that would have justified an order granting a second hearing.

In re C.T. **(July 16, 2002) 100 Cal.App.4th 101 [121 Cal.Rptr.2d 897**]. **Court of Appeal, Fourth District, Division 1.**

The juvenile court applied the Uniform Child Custody Jurisdiction and Enforcement Act (Fam. Code, § 3424(a),(c),(d)) (the act) to a Welfare and Institutions Code section 300 proceeding on behalf of the child, placing the child with her mother and terminating its dependency jurisdiction over the child.

In 1998, an Arkansas state court granted the father primary physical custody of the child and approved the mother's visitation with the child every other weekend and three weeks during the summer. The father remained in Arkansas, where the child was born, and the mother thereafter resided in California. During one of the child's visits with her mother in California, the child informed her stepfather that her father had sexually molested her while she was in his custody. As a result, the mother sought a restraining order in a California family court to retain custody of the child in California. The California family court issued a temporary restraining order against the father in mid July 2001. Before the order to show cause hearing in August, the San Diego County Health and Human Services Agency (the agency) filed a section 300 petition on the child's behalf in California juvenile court, alleging sexual abuse of the child by the father.

At the juvenile detention hearing, the juvenile court determined that the agency had made a prima facie showing that the child was a person described by Welfare and Institutions Code section 300, exerted emergency jurisdiction over the child, and granted the social worker the discretion to detain the child in the mother's home. Furthermore, the juvenile court declined the father's request to hold an evidentiary hearing to determine whether the court properly exercised emergency jurisdiction. At the jurisdictional hearing, the juvenile court made a true finding that the child was a person described in Welfare and Institutions Code section 300. The California court placed the child with the mother pending further order of the Arkansas court and terminated its dependency jurisdiction over the child.

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Update

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Both parents separately appealed the California juvenile court decision. The mother appealed on the ground that the court should not have terminated its dependency jurisdiction over the child. The father appealed, arguing that the court's order placing the child with her mother under section 300 should be reversed because the court was not authorized to make these findings under the act. The father also contended that the court did not comply with the act's procedural requirements.

The Court of Appeal reversed the juvenile court's finding that the child was a dependent under section 300, concluding that the court was not authorized under the act to make this finding. However, the appellate court affirmed the order placing the child with her mother and terminating the juvenile court's jurisdiction over the child, indicating that the material evidence supported a finding that the court was authorized to make the order under the act.

The appellate court indicated that by making a true finding under section 300, the juvenile court had not complied with the procedural requirements of the act. The appellate court noted that section 3424 of the act states that a California court may enter a child custody order for a child subject to an existing sister-state custody order only if it finds an emergency necessitating protection of the child from mistreatment or abuse and if the order is limited to a specific time period. The appellate court asserted that a section 300 dependency true finding is not authorized by the act because such a finding has permanent ramifications for the custody case. Therefore, the court concluded that although an emergency existed in the present case, the section 300 finding made by the juvenile court had no time limitations and was too permanent to be authorized under the emergency jurisdiction provision of the act. Furthermore, the appellate court held that the California juvenile court had erred by not limiting the duration of the custody order and by not immediately contacting and informing the Arkansas court of its emergency jurisdiction, but that these errors were not prejudicial.

While the appellate court reversed the juvenile court's finding that the child was a person described under section 300, the court affirmed the juvenile court's order granting the mother temporary custody of the child due to the abuse by the father. The court held that the material evidence presented during the section 300 hearing conducted by the juvenile court duplicated in part the evidence the court would receive when determining whether an emergency existed under the act. Thus, the appellate court indicated that this material evidence was sufficient to support a finding under the act that an emergency existed and protection of the child was necessary. Accordingly, the court upheld the juvenile court's order placing the child with her mother pending further order of the Arkansas court.

The appellate court rejected the mother's argument that the juvenile court had erred by terminating its dependency jurisdiction. The mother argued that a continuing emergency existed and, therefore, the court should not have terminated its emergency jurisdiction in order to protect the child. Emphasizing the temporary, limited nature of the juvenile court's emergency jurisdiction, the appellate court held that the California juvenile court did not have the authority to conduct a section 300 proceeding under the act. Therefore, the appellate court concluded that the dependency proceeding was not "ongoing" and stated that the proceeding was transferred to the Arkansas juvenile court. The appellate court noted that the Arkansas court was willing and able to address both the custody issue and the abuse or neglect issue in order to protect the child. Therefore, the appellate court affirmed the juvenile court's order placing the child with her mother and terminating its dependency jurisdiction over the child. In addition, the appellate court reversed the juvenile court's finding that the child was a dependent because the juvenile court had no authority to do so under the act.